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# MARYLAND DIGEST ANNOTATED

COVERING ALL REPORTED AND MANY UNREPORTED  
DECISIONS

FROM  
1 HARRIS AND McHENRY TO 123 MARYLAND  
(See Preface)

UNDER THE AMERICAN DIGEST CLASSIFICATION

A KEY-NUMBERED INDEX TO ALL  
OF THE CASE LAW OF THE APPELLATE  
COURTS OF THE UNITED STATES

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and

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Associate Editors.

VOLUME 1.

ABANDONMENT—BARBERS.

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1907

## PREFACE.

This Digest covers all of the reported and many of the unreported cases from the earliest times to about June, 1914. In the American Digest System, upon which this Digest is based (see pages vii and viii, post), the work covers volume 18 of the Key Number Series, and volume 90 of the Atlantic Reporter to page 720. In the Maryland Reports, it covers all of the cases in 121 Maryland, and many of those in 122 Maryland and 123 Maryland.

In view of the fact that the publication of the complete work will extend over a period of about two years, it has been decided to go beyond the terms of the announcements of the work, which provided for covering the Maryland Reports only through volume 123, and in the first volumes to simply cover those Maryland cases which were accessible in June, 1914, when the work first went to press, and to add, in the last volume, a supplement, digesting all of the cases decided between the date when the first volume went to press and the date of the closing of the material for the last volume. In other words, the last volume of the Digest will include a supplement to all of the preceding volumes, bringing the complete work down to that date. In the Table of Cases, those cases digested in the Supplement will be included.

Many of the Maryland cases have been reported in various series of unofficial reports, as well as in the official reports. In such cases the parallel references to the unofficial reports are given. The principal of such reports are: Atlantic Reporter; American Decisions; American Reports; American State Reports; Lawyers' Reports Annotated; American Annotated Cases; American and English Annotated Cases.

Many valuable notes appearing in the Lawyers' Reports Annotated, both series, are referred to under the appropriate sections of the Digest, and where a Maryland case has been cited in a note in the work referred to, the citation is given after the case reference. In this way the investigator is frequently directed to a complete brief of the authorities on his point.

The case paragraphs are also annotated to appropriate sections of the Maryland Code, in many instances.

Code references are to the Code of 1911, and the supplement of 1914, cited as volume 3.

The table of cases, which will appear in the last volume of the Digest, will show reversals, affirmances, etc., by the United States Supreme Court.

A number of Maryland cases that were designated by the Court of Appeals, "Not to be reported," are omitted from the Maryland reports entirely, or are given merely in the form of memorandum rulings. Many of these have been digested in full in the Digest.

This Digest is the result of several years of labor intended to bring within a reasonably small compass all of the case law of Maryland, classified and annotated in a manner to render the work a complete index to all of the case law of the United States. Having regard to the fact that the usefulness of a law book of this kind is measured no less by a knowledge of how to use it than by its contents, it is hoped that the explanation of the plan of the work given on succeeding pages will be carefully read and observed.

The editors invite specific criticisms relative to the accuracy or completeness of the material in this and in the succeeding volumes, as they appear, to the end that any errors and omissions may be corrected and supplied before the publication of the last volume.

To say that the present work represents the labors of many minds and hands, and that to no single person is due whatever merit it may possess, is but to recognize assistance and co-operation so valuable as to be largely responsible for the completion of the task. The classification is, of course, the work of the West Publishing Company, to whom indebtedness is also acknowledged for editorial assistance and advice throughout the prosecution of the work. Credit is also due, among many others, to George Ross Veazey, Esq., and to Samuel W. Venable, Esq., for editorial work done on the first and second volumes.

## THE SCOPE OF THE DIGEST AND HOW TO USE IT.

The present work is an attempt to epitomize the case law of Maryland under a classification or scheme of analysis that indexes all of the reported cases of the appellate courts of the United States along with those of Maryland. If the purpose has been measurably accomplished, the proper use of this work should enable the investigator to find, through it, and without any further investigation, just where to look for all of the American cases on a specific point, at the same time that he ascertains whether there are any Maryland cases on that point.

The question whether a given point has been previously adjudicated in this country depends upon the applicability of any one or more of nearly one million decisions, rendered between the years 1658 and 1915. When, a number of years ago, the idea of bringing within the bounds of a single work a digest of all of the case law of the country was conceived, the first problem that presented itself was the formulation of a classification of the various branches of the law, and of their subdivisions, that would be sufficiently comprehensive to cover every point of every case. The idea in question found expression in the *Century Digest*, published by the West Publishing Company in 1904, and carrying under a single classification the decisions of all of the appellate courts of the country rendered between the years 1658 and 1896, inclusive. The classification has become widely known as the "American Digest Classification." In 1906 the *Century Digest* was supplemented by the *Decennial Digest*, which covered the decisions rendered during the ten-year period following that covered by the earlier work. But in the preparation of the *Decennial Digest* errors and inconsistencies that had crept into the American Digest Classification were removed and the scheme as a whole further perfected. Besides this, an entirely new feature was added. The idea was evolved of making the section numbers of the various titles absolutely permanent, so that when a particular point was located in the *Decennial Digest*, all future cases on the same point would be found under precisely the same section number in the *Annals* issued after 1906. This made the section numbers in the *Decennial Digest* the key numbers, as it were, to all future cases. And to complete the cycle, so as to enable the investigator to cover the whole ground by his study of the analysis of his subject in the *Decennial Digest*, cross-references were given in that work, under every section of every title, to the place or places in the *Century Digest* where the earlier cases could be found.

Thus, by locating the appropriate title and section in the *Decennial Digest*, the investigator has before him all of the cases decided between the years 1896 and 1906, the proper title and section number where, in the *Annals*, he will find the later cases, and also a specific cross-reference to the place or places where, in the *Century Digest*, the earlier cases will be found.

The present editors have carried the scheme one step further. First of all, they have taken as the basis of this work every part of the American Digest Classification. No title or section is omitted, whether or not there are any Maryland cases under it, and none of the section numbers or titles are changed. The Maryland cases have been carefully digested and annotated, with the peculiar standpoint of the local practitioner constantly in mind, and placed in their appropriate places in the frame-work, the complete classification. The result is that the use of this work will disclose to the investigator the particular section or sections in the American Digest Classification under which the decisions he wants should appear. If there are any Maryland cases on the point, they will be found at once, but the proper section title and number to fit the point will be found whether there are any Maryland cases on the point or not. This section title and number will be the identical one to which to turn in the Decennial Digest and the key number Annuals for cases from other states and for a cross-reference to the Century Digest for the earlier cases.

Further features of the classification used and of other points of the work are as follows:

1. Each main title is preceded by a comprehensive statement of its scope, specific mention being made of the principal matters included and excluded.

2. The analysis of each article is followed by minute cross-references to related points and topics. A careful perusal of this feature will frequently save the investigator a considerable loss of time due to a misconception as to the scope of the title. Thus, if the point under investigation relates to the injury of crops by wild animals, and the investigator should begin his investigation under the title, "Animals" (cols. 365-392), he will find in the table of cross-references to this title, in column 372, a cross-reference indicating that his point is covered in this work under the title, "Agriculture," section 9 (col. 325). By turning to that section the investigator will find that there are no case paragraphs under it. This means that the point has not been passed upon by the Maryland Court of Appeals, but if the investigator will turn to the same title and section number in the Decennial Digest and the Annuals since 1906 (known as the Key Number Series), he will find a number of decisions from other states, and a specific cross-reference to the place in the Century Digest where the earlier cases will be found collected.

3. Cross-reference titles are an elaborate feature of the work. Under these titles, covering the various subjects and causes of litigation, specific references are given to the appropriate titles and sections where the pertinent cases will be found. Thus, while there is no such main title as "Automobiles," that word constitutes a cross-reference title under which will be found specific cross-references to the places where the various matters affecting automobiles, as subjects or causes of litigation are treated.

In using these cross-references, and also the cross-references under the various sections of the main titles, the investigator should keep before him the fact that if no cases appear under the section to which he is referred, this simply means that there are no *Maryland* cases on the point for the period covered, and that the section before him is the precise one to which to turn, in the Decennial Digest and Annuals, as above outlined, to find the cases from other states and also any Maryland cases that may have been decided since the time herein covered.

## ABBREVIATIONS USED IN THIS DIGEST.

### MARYLAND REPORTS.

H. & McH.....	Harris & McHenry.
H. & J.....	Harris & Johnson.
H. & G.....	Harris & Gill.
G. & J.....	Gill & Johnson.
Gill .....	Gill.
Bland .....	Bland's Chancery Decisions.
Md. Ch.....	Maryland Chancery Decisions.
Md. ....	Maryland Reports.

### OTHER ABBREVIATIONS.

Am. Dec.....	American Decisions.
Am. Rep.....	American Reports.
Am. St. Rep.....	American State Reports.
Ann. Cas.....	American, or American and English, Annotated Cases.
Atl. ....	Atlantic Reporter.
B. R. C.....	British Ruling Cases.
L. R. A.....	Lawyers Reports Annotated.
L. R. A. (N. S.).....	Lawyers Reports Annotated, New Series.



## LIST OF TITLES IN THIS VOLUME.

(Main titles are in large type; cross-reference titles in italics.)

<b>ABANDONMENT.</b>	<i>Acquittance.</i>	<i>Affiliation.</i>
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<i>Abbreviations.</i>	<i>Active Trusts.</i>	<i>Affirmative.</i>
<b>ABDUCTION.</b>	<i>Act of Bankruptcy.</i>	<i>Affirmative Relief.</i>
<i>Abettors.</i>	<i>Act of God.</i>	<i>Affixing.</i>
<i>Abide.</i>	<i>Act of Insolvency.</i>	<b>AFFRAY.</b>
<i>Abode.</i>	<i>Act of Ownership.</i>	<i>Affreightment.</i>
<i>Abolition.</i>	<i>Acts.</i>	<i>African.</i>
<b>ABORTION.</b>	<i>Actual Controversy.</i>	<i>After-Acquired Property.</i>
<i>Abridgment.</i>	<i>Actual Possession.</i>	<i>After-Acquired Title.</i>
<i>Abrogation.</i>	<i>Actual Total Loss.</i>	<i>After-Born Children.</i>
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<i>Absence.</i>	<i>Additional Allowances.</i>	<i>Agency.</i>
<b>ABSENTEES.</b>	<i>Additional Assignments.</i>	<i>Aggravated Assault.</i>
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<i>Academies.</i>	<b>OWNERS.</b>	<b>AGRICULTURE.</b>
<i>Acceleration.</i>	<i>Adjournment.</i>	<i>Aid.</i>
<i>Acceptance.</i>	<i>Adjudication.</i>	<i>Aider By Verdict.</i>
<i>Access.</i>	<i>Adjustment.</i>	<i>Aiders and Abettors.</i>
<b>ACCESSION.</b>	<i>Admeasurement of Dower.</i>	<i>Air.</i>
<i>Accessories.</i>	<i>Administration.</i>	<i>Air Brakes.</i>
<i>Accident.</i>	<b>ADMIRALTY.</b>	<i>Alaska.</i>
<i>Accident Insurance.</i>	<i>Admission.</i>	<i>Alcoholic Liquors.</i>
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<b>FACTION.</b>	<i>Advances.</i>	<i>Alibi.</i>
<b>ACCOUNT.</b>	<i>Adverse Claim.</i>	<i>Alienation.</i>
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<b>ACCOUNT STATED.</b>	<i>Adverse User.</i>	<i>Allotment.</i>
<i>Accretion.</i>	<i>Advertisement.</i>	<i>Allowance.</i>
<i>Accrual.</i>	<i>Advice of Counsel.</i>	<i>Alluvion.</i>
<i>Accumulations.</i>	<i>Advising Acquittal.</i>	<i>Almanac.</i>
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# ABANDONMENT.

## Scope-Note.

[INCLUDES the general nature of relinquishment of property or other rights of any kind, as distinguished from dedication, surrender, waiver, etc; and its effect by way of extinguishment of the title or right.

[EXCLUDES accidental loss (see "*Finding Lost Goods*"); and abandonment of particular persons or personal relations, or of particular species of property, rights, remedies, or proceedings (see cross-references to specific heads). For complete list of matters excluded, see cross-references, post.]

## Analysis.

- § 1. Nature and elements.
- § 2. — In general.
- § 3. — Intent.
- § 4. — Acts and omissions.
- § 5. Evidence.
- § 6. Questions for jury.
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## Cross-References.

Abandoned pleadings as admissions, see "Evidence," § 208.  
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Of assets by trustee in bankruptcy, see "Bankruptcy," § 150.  
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Of domicile, see "Domicile," § 4.  
Of employment as affecting right to wages, see "Master and Servant," § 73.  
Of goods by consignee, see "Carriers," § 89.  
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Of pleadings, see "Evidence," § 208.  
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See "Husband and Wife," §§ 302-321;  
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Agency by broker as affecting right to compensation, see "Brokers," § 46.  
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*Of particular species of property or rights.*  
See "Adverse Possession," §§ 53, 109; "Animals," § 14; "Canals," § 22; "Copy-rights," § 40; "Drains," § 65; "Easements," § 30; "Highways," § 79; "Homestead," §§ 161-168; "Insurance," § 730; "Levees," §§ 3, 15; "Literary Property," § 5; "Private Roads," § 4; "Trade-Marks

and Trade-Names," § 32; "Turnpikes and Toll Roads," § 29.  
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 Public office, see "Justices of the Peace," § 9; "Municipal Corporations," § 150; "Officers," § 63.  
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 Rights under contract, as affecting right of contractor to mechanic's lien, see "Mechanics' Liens," § 92.  
 Rights under contract by school teacher, see "Schools and School Districts," § 139.  
 Rights under contract for municipal water supply, see "Waters and Water Courses," § 200.  
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 Rights under contract to devise, see "Wills," § 64.  
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 Street, see "Municipal Corporations," § 657.  
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 Water rights, see "Waters and Water Courses," §§ 32, 48, 151, 160, 162.

## NOTE.

No Maryland cases touching this subject are to be found in the Maryland Reports. Nevertheless the titles and sub-titles are given as they appear in the American Digest Key Number classification, so that the investigator may at one time accomplish the double purpose of learning whether a given point has been passed upon by the Maryland courts and also ascertain the particular place in the American Digest System where all state and federal cases upon the point will be found collected.

Annotations and cross-references will be found throughout the title.

## §§ 1, 2, 3, 4. Nature and elements.

## Annotation.

1 R. C. L. 1 *et seq*; 1 Tiffany, Real Prop. 735, 818; 1 Words and Phrases, 4-13.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 5. Evidence.

## Cross-Reference.

See "Animals," § 14.

## Annotation.

1 R. C. L. 7-8, and references under preceding sections.

## § 6. Questions for jury.

## Annotation.

1 R. C. L. 7-8.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 7. Operation and effect.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

[For matters of "Abandonment" not included in this title see table of cross-references at head of title.]

*Of remedies or proceedings.*

See "Attachment," §§ 184, 274; "Execution," § 146; "Garnishment," § 198.  
 Actions in general, see "Action," § 70.  
 Actions in general, affecting limitations, see "Limitations of Actions," § 130.  
 Actions in general, affecting lis pendens, see "Lis Pendens," § 11.  
 Actions in general, affecting right to appeal, see "Appeal and Error," § 144.  
 Actions in general, effect on award of costs, see "Costs," § 46.  
 Appeal or other proceeding for review, see "Appeal and Error," § 805; "Criminal Law," § 1131; "Justices of the Peace," § 166.  
 Application for patent, see "Patents," § 107.  
 Charge of felony by waiver of jury trials, see "Jury," § 29.  
 Condemnation proceedings, see "Eminent Domain," § 246.  
 Conversion, see "Trove and Conversion," § 16.  
 Motion, see "Motions," § 34.  
 Motion for change of venue, see "Criminal Law," § 145.  
 Motion for new trial, see "New Trial," § 154.  
 Part of demand to confer jurisdiction on justice of the peace, see "Justices of the Peace," § 44.  
 Pleading, see "Equity," §§ 171, 238; "Pleading," § 212.  
 Plea in abatement, see "Pleading," § 110.  
 Seizure of bankrupt's property, see "Bankruptcy," § 116.

## ABATEMENT.

## Cross-References.

Of action, see "Abatement and Revival."  
 Of appeal, see "Appeal and Error," §§ 330-336, 804; "Criminal Law," § 1070.  
 Of attachment, see "Attachment," §§ 225-279.  
 Of bastardy proceeding, see "Bastards," §§ 22-32.  
 Of criminal prosecutions, see "Criminal Law," §§ 277-285.  
 Of dams, see "Waters and Water Courses," § 174.  
 Of legacy or devise, see "Wills," §§ 804-818.  
 Of nuisance, see "Health," §§ 13-14; "Intoxicating Liquors," §§ 21, 258-281; "Municipal Corporations," §§ 623, 697; "Nuisance," §§ 18-40, 74, 75, 77-88.  
 Of obstruction of street, see "Municipal Corporations," § 697.  
 Of price of goods sold, see "Sales," § 188.  
 Of price of land sold, see "Vendor and Purchaser," §§ 174-177.  
 Of rent, see "Landlord and Tenant," § 211.  
 Of obstruction of easement, see "Easements," § 60.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

Of obstruction of highway, see "Highways," § 158.

Of obstruction of navigable waters, see "Navigable Waters," § 26.

Of tax, see "Levees," § 22; "Taxation," § 470; "Towns," § 59.

Of wharf or pier, see "Navigable Waters," § 48.

*Annotation.*

1 Words and Phrases, 13, 14.

## ABATEMENT AND REVIVAL.

### *Scope-Note.*

[INCLUDES suspension or defeat of civil actions in general by matters affecting the procedure merely, not the merits of the cause of action; grounds of such abatement of actions, more particularly want of jurisdiction of the court, bringing more than one action for the same cause, defects or irregularities in bringing an action, and death or disability of parties, occurring either before or after action is brought; necessity of pleading or otherwise taking advantage of matter in abatement, and effect of failure to do so; and revival of actions which survive.

[EXCLUDES abatement of particular kinds of actions and of civil remedies other than actions (specific heads); abatement of criminal prosecutions (see "*Criminal Law*"); requisites and sufficiency of pleas in abatement in civil cases (see "*Pleading*"); rights of action by or against personal representatives (see "*Executors and Administrators*"); and substitution of parties in pending actions (see "*Parties*"). For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

#### **I. Objections to jurisdiction.**

- § 1. Want of jurisdiction as ground of abatement.
- § 2. Jurisdiction of the person.
- § 3. Necessity and mode of making objection.

#### **II. Another Action Pending.**

- § 4. Ground of abatement in general.
- § 4(a) Pleas in equity.
- § 5. Nature of other action or proceeding.
- § 5(a) Vexatious character of other action.
- § 6. Priority of other action.
- § 7. Pendency of other action.
- § 7(a) Using plea to defeat counterclaim.
- § 8. Identity of cause of action, issues, or relief.
- § 9. Identity of parties.
- § 10. Action in different jurisdiction.
- § 11. — Court of same state.
- § 12. — State court or United States court.
- § 13. — Court of different state or country.
- § 13(a) Actions at law and in equity.
- § 14. Defects in other action.
- § 15. Dismissal or other termination of other action.
- § 16. Appeal or other proceeding for review in other action.
- § 17. Necessity and mode of making objection.

#### **III. Defects and Objections as to Parties and Proceedings.**

- § 17(a) In general.
- § 17(b) Destruction of papers.
- § 18. Nature or form of action.
- § 19. Nonperformance of condition precedent.

**III. Defects and Objections as to Parties and Proceedings—Continued.**

- § 20. Premature action.
- § 20(a) Action by party while in default.
- § 21. Fictitious plaintiff.
- § 22. Disability or incapacity to sue.
- § 23. Plaintiff not real party in interest.
- § 24. Action in name of person deceased.
- § 25. Disability or privilege of defendant.
- § 26. Action against person deceased.
- § 27. Nonjoinder of party.
- § 28. Misjoinder of parties.
- § 29. Misnomer or misdescription of party.
- § 30. Defects or irregularities in process or service.
- § 31. Variance between process and pleading.
- § 32. Defects or irregularities in pleadings or other proceedings.
- § 33. Disability of party pending suit in general.
- § 34. Marriage of female party pending suit.
- § 35. Removal of disability pending suit.
- § 36. Reorganization or consolidation of corporation.
- § 37. — Cause of abatement.
- § 38. — Revival against new corporation.
- § 39. Dissolution of corporation.
- § 40. Necessity and mode of making objection.

**IV. Transfer or Devolution of Title, Right, Interest, or Liability.**

- § 41. Plaintiff's title, right, or interest in general.
- § 42. Defendant's title, interest, or liability in general.
- § 43. Insolvency or bankruptcy of individual party.
- § 44. Insolvency, bankruptcy, or receivership of corporation.
- § 45. Termination or devolution of representative or official capacity.
- § 46. Necessity and mode of making objection.
- § 47. Continuance or revival by or against successor in interest.

**V. Death of Party and Revival of Action.****(A) ABATEMENT OR SURVIVAL OF ACTION.**

- § 48. Death as cause of abatement in general.
- § 49. What law governs.
- § 50. Statutory provisions.
- § 51. Causes of action which survive.
- § 52. — In general.
- § 53. — Actions on contract.
- § 54. — Actions for personal injuries.
- § 55. — Actions for injuries to property.
- § 56. — Actions relating to specific property.
- § 57. — Statutory actions.
- § 58. Actions and proceedings which abate.
- § 59. Death of plaintiff.
- § 60. — Sole plaintiff.
- § 61. — One of two or more plaintiffs.
- § 62. Death of defendant.
- § 63. — Sole defendant.

**V. Death of Party and Revival of Action—Continued.****(A) ABATEMENT OR SURVIVAL OF ACTION.—Continued.**

- § 64. — One of two or more defendants.
- § 65. Death of party in representative or official capacity.
- § 66. Death of both parties.
- § 67. Death after verdict, decision, or interlocutory judgment.
- § 68. Death after final judgment.
- § 69. Death pending appeal or other review.
- § 70. Necessity and mode of suggesting death as cause of abatement.

**(B) CONTINUANCE OR REVIVAL OF ACTION.**

- § 71. Nature and necessity.
- § 72. Persons required or entitled to continue or revive action.
- § 73. Persons against whom action may be continued or revived.
- § 73(a) Death of one of two or more plaintiffs.
- § 73(b) Death of one of two or more defendants.
- § 74. Time of taking proceedings.
- § 75. Application and proceedings thereon.
- § 76. Order for continuance or revival.
- § 77. Proceedings after continuance or revival.

**VI. Waiver of Grounds of Abatement and Time and Manner of Pleading in General.**

- § 78. Defects and objections which may be waived.
- § 79. Stipulations and other agreements.
- § 80. Failure to make objection in general.
- § 81. Delay in making objection or filing plea.
- § 82. Pleading out of order.
- § 83. Demurring and proceedings thereon.
- § 84. Pleading to merits and further proceedings.
- § 85. Pleading in abatement and in bar.
- § 86. Failure to insist on judgment on plea.
- § 87. Waiver of matter arising after issue.
- § 88. Waiver of failure to revive action.

*Cross-References.*

Affecting award of costs, see "Costs," § 45.  
 Affecting limitations, see "Limitation of Actions," § 130.  
 Affecting right to sue out attachment, see "Attachment," § 4.  
 Death or removal of personal representative pending action, see "Executors and Administrators," § 440.  
 Effect of repeal of statute, see "Statutes," § 276.  
 Election of remedy, see "Election of Remedies."  
 Following state statutes and practice in federal courts, see "Courts," § 343.  
 In admiralty, see "Admiralty," § 51.  
 In court of claims, see "Courts," §§ 456, 462.  
 In marine court, see "Courts," § 176.  
 Judgment on plea in abatement as bar to another action, see "Judgment," § 571.  
 Judgment on plea in abatement, as conclusive, see "Judgment," § 655.  
 Pending appeal or writ of error, see "Appeal and Error," § 330.

Pleas in abatement, see "Attachment," §§ 253-259; "Criminal Law," §§ 278-285; "Equity," § 167; "Judgment," § 571; "Pleading," §§ 106-111, 293.  
 Recourse to other remedy as affecting right to certiorari, see "Certiorari," § 7.  
 Revival of judgment, see "Judgment," §§ 851-872.  
 Revivor in equity, see "Equity," §§ 304-309.  
 Stay of proceedings, see "Action," §§ 68, 69.  
 Termination of coverture pending action by or against married woman, see "Husband and Wife."  
 Validity of retrospective laws providing that certain causes of action shall not abate by death of party, see "Constitutional Law," § 191.

*Particular actions or proceedings.*

See "Appeal and Error," §§ 13, 332-334, 804; "Bankruptcy," § 25; "Contempt," §§ 48, 49; "Divorce," § 82; "Ejectment," §§ 29, 30; "Forcible Entry and Detainer,"

§ 13; "Garnishment," § 126; "Habeas Corpus," § 1; "Libel and Slander," § 72; "Mandamus," § 19; "Partition," §§ 27, 28; "Quo Warranto," § 23.  
 Against devisee to enforce debts of testator, see "Wills," § 847.  
 Appeal in criminal prosecution, see "Criminal Law," §§ 1070, 1181.  
 Bastardy proceedings, see "Bastards," §§ 23-32, 35.  
 By executor for accounting, see "Executors and Administrators," § 471.  
 By foreign administrator, see "Executors and Administrators," § 524.  
 By or against husband or wife, see "Husband and Wife," § 223.  
 By or against partnership by dissolution of firm, see "Partnership," § 203.  
 Election contest, see "Elections," §§ 282, 296.  
 For causing death, see "Death," §§ 29, 30.  
 For infringement of patent, see "Patents," § 284.

For penalties, see "Penalties," § 31.  
 For sale of assets by assignee for benefit of creditors, see "Assignments for Benefit of Creditors," § 241.  
 For seduction, see "Seduction," § 10.  
 Inquisitions of lunacy, see "Insane Persons," § 11.  
 Probate and contest of wills, see "Wills," §§ 218, 226, 361.  
 Second information for same offense, see "Indictment and Information," § 45.  
 Successive indictments for same offense, see "Indictment and Information," § 15.  
 To determine necessity of administration, see "Executors and Administrators," § 3.  
 To enforce forfeiture of imported goods, see "Customs Duties," § 133.  
 To foreclose mortgage, see "Mortgages," § 416.  
 To set aside fraudulent transfer, see "Fraudulent Conveyances," §§ 24, 241, 243.

## I. OBJECTIONS TO JURISDICTION.

### § 1. Want of jurisdiction as ground of abatement.

(a) Defendant in an assault case pleaded to the jurisdiction on the ground of non-residence. *Held*, that the question of residence should be determined before trial upon the merits.—*Tyler v. Murray*, 57 Md. 418.

(b) A person sued out of the county in which he resides may present the question of his non-residence by a motion for a *non pros.*, supported by affidavit, as well as by plea in abatement.—*Gittings v. State*, 33 Md. 458.

### § 2. Jurisdiction of the person.

(a) The statute providing that no one shall be sued out of the county in which he resides, one who is so sued may plead his non-residence formally, by way of plea in abatement.—*Hamilton v. State*, 32 Md. 348.

### § 3. Necessity and mode of making objection.

#### Cross-References.

In bastardy proceedings, see "Bastards," § 35.  
 In proceedings for establishment of drains, see "Drains," § 31.  
 Necessity for verification of plea, see "Pleading," § 293.  
 Waiver of objections to jurisdiction by appearance, see "Appearance," § 16.  
 (a) The objection to proceedings in cases of foreign attachment on the ground of want

of jurisdiction of the court may be taken advantage of on motion to quash or in arrest of judgment after verdict.—*United States Express Co. v. Hurlock*, 120 Md. 107, 87 Atl. 834.

(b) Defendant in an assault case pleaded to the jurisdiction of the court on the ground of non-residence. *Held*, that the question of residence should be determined before trial on the merits.—*Tyler v. Murray*, 57 Md. 418.

(c) Act. 1868, c. 471, § 211 (superseded by Code, art. 23, § 92), providing that suits against foreign corporations exercising franchises in this state may be brought in this state by a resident thereof for any cause of action, and by a nonresident when the cause of action has arisen or the subject of the action is in this state, is a grant to the courts of a restricted and limited jurisdiction over certain suits against foreign corporations, and therefore a motion to dismiss for want of jurisdiction is seasonably made after a plea to the merits. In this it differs from the provision of the Code that no person shall be sued out of the county of his residence, which, being for the benefit of the party himself, is waived by a plea to the merits.—*Cromwell v. Royal Canadian Ins. Co.*, 49 Md. 366, 33 Am. Rep. 258. [Cited and annotated in 70 L. R. A. 536, on non-resident's right to sue foreign corporation.]

(d) A person sued out of the county in which he resides may present the question of his nonresidence by a motion for a *non pros.*, supported by affidavit, as well as by plea in abatement.—*Gittings v. State*, 33 Md. 458.

## II. ANOTHER ACTION PENDING.

### *Cross-References.*

Another prosecution pending, see "Criminal Law," § 173.

Effect of pendency of action on set-off or counterclaim, see "Set-Off and Counterclaim," § 39.

Exclusiveness of statutory remedy for enforcement of mechanic's lien, see "Mechanics' Liens," § 246.

Form and requisites of plea, see "Pleading," § 106.

Ground for continuance of prosecution for conspiracy in bringing action, see "Criminal Law," § 589.

Ground for dissolution of attachment, see "Attachment," § 235.

Injunction proceedings as defense in action for forcible entry and detainer, see "Forcible Entry and Detainer," § 13.

Other proceeding for review, see "Appeal and Error," § 13.

Right to mandamus, see "Mandamus," § 5.

Splitting cause of action, see "Action," § 53.

Stay of proceedings in another court, see "Courts," § 479.

Stay of proceedings pending other action, see "Action," § 69.

Sufficiency of plea in equity, see "Equity," § 167.

*Abatement of particular actions or proceedings.*  
See "Divorce," § 82; "Ejectment," § 29; "Forcible Entry and Detainer," § 13; "Garnishment," § 126; "Habeas Corpus," § 1; "Partition," § 27.

Probate of will, see "Wills," § 218.

To set aside fraudulent transfer, see "Fraudulent Conveyances," § 243.

### § 4. Ground of abatement in general.

(a) A bill to reform and specifically enforce a contract and an action for damages for breach thereof up to the time the bill was filed, may be maintained at the same time.—*O'Keefe v. Irvington Real Estate Co.*, 87 Md. 196, 39 Atl. 428.

(b) The pendency of a subsequent suit may not be pleaded in bar or abatement of a prior one for the same cause of action.—*Bank of U. S. v. Merchants' Bank of Balto.*, 7 Gill 415.

### § 4(a). Pleas in equity.

#### *Cross-Reference.*

See 1 Cent. Dig. Abate. & R. § 26.

No paragraphs in this digest. For cases in other states, see cross-reference to Century Digest, *supra*.

### § 5. Nature of other action or proceeding.

#### *Cross-Reference.*

Agreement for or submission to arbitration, see "Arbitration and Award," §§ 10, 21.

(a) A bill to reform and specifically enforce a contract, and an action for damages for breach thereof up to the time the bill was filed, may be maintained at the same time.—*O'Keefe v. Irvington Real Estate Co.*, 87 Md. 196, 39 Atl. 428.

### § 5(a). Vexatious character of other action.

#### *Cross-Reference.*

See 1 Cent. Dig. Abate. & R. § 31.

No paragraphs in this digest. For cases in other states, see cross-reference to Century Digest, *supra*.

### § 6. Priority of other action.

#### *Cross-Reference.*

See post, § 8.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 7. Pendency of other action.

(a) The pendency of a subsequent suit may not be pleaded in bar or abatement of a prior one for the same cause of action.—*Bank of U. S. v. Merchants' Bank of Balto.*, 7 Gill 415.

### § 7(a). Using plea to defeat counterclaim.

#### *Cross-Reference.*

See "Set-Off and Counterclaim," § 39.

### § 8. Identity of cause of action, issues, or relief.

#### *Cross-References.*

See post, § 9.

In particular actions or proceedings, see "Attachment," § 234; "Divorce," § 82; "Ejectment," § 29; "Forcible Entry and Detainer," § 13; "Garnishment," § 126; "Habeas Corpus," § 1; "Partition," § 27; "Wills," § 218.

(a) A suit for the sale of property under an annuity mortgage to complainant for the payment of the mortgage debt will not be defeated because there is pending in the United States court a suit by heirs of the



mortgagor against complainant for the partition of the mortgaged real estate, and for a sale if it could not be divided, since the same rights were not asserted, nor the same relief sought.—*Gilpin v. Carroll*, 92 Md. 44, 47 Atl. 1021.

(b) A plea, to a bill in equity, that there is another suit pending in the same court, for the same cause, is good only when the whole of the relief sought in the second suit is attainable in the first.—*McKaig v. Piatt*, 34 Md. 249.

(c) Mortgagors filed a bill to redeem and charged that the mortgagee had been in possession of the property, and had received more than sufficient rents and profits to pay the mortgage debt, and the mortgagee pleaded the pendency in the same court of a prior suit to foreclose the mortgage, in which the same matter was set up in defense. *Held* that, since no decree for a surplus could be given in the foreclosure suit, its pendency did not bar the suit to redeem.—*Seebold v. Lockner*, 30 Md. 133.

### § 9. Identity of parties.

#### *Cross-Reference.*

See ante, § 8.

(a) An action against one of two joint tortfeasors cannot be pleaded in abatement to an action against the other joint tortfeasor for the same tort, as the defendants are not the same in both actions.—*State v. Boyce*, 72 Md. 140, 19 Atl. 366, 20 Am. St. Rep. 458. [*Cited and annotated in 58 L. R. A. 430, on effect of judgment against one joint tortfeasor on other's liability.*]

(b) Code, art. 67, § 2, which gives a right of action in the name of the state for the use of the wife, husband, parent, and child of a person whose death has been caused by negligence, and provides "that not more than one action shall lie for and in respect to the same subject-matter of complaint," does not apply to such a case, as the object of the statute is to protect a defendant from several suits for the same injury.—*State v. Boyce*, 72 Md. 140, 19 Atl. 366, 20 Am. St. Rep. 458. [*Cited and annotated in 58 L. R. A. 430, on effect of judgment against one joint tortfeasor on the other's liability.*]

### § 10. Action in different jurisdiction.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

### § 11.— Court of same state.

(a) If a party elects to proceed at law, his bill will be dismissed, and, if he elects to proceed in equity, he will be restrained from further prosecuting his suit at law without leave of the court of chancery first had and obtained.—*Union Bank v. Kerr*, 2 Md. Ch. 460.

(b) A plaintiff suing at law and in equity at the same time, and for the same matter, will be compelled to elect in which court he will proceed. The reason and object of this rule is to relieve a defendant from the "double vexation" of defending himself in two courts against the same demand, and to avoid the clashing of jurisdictions which would result from a jury finding a verdict one way, and the chancellor deciding another.—*Bradford v. Williams*, 2 Md. Ch. 1.

### § 12.— State court or United States court.

#### *Cross-Reference.*

Effect of partial invalidity of statute, see "Statutes," § 64.

#### *Annotation.*

Pendency of actions in both state and federal courts sitting in the same state.—42 L. R. A. 449, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 13.— Court of different state or country.

#### *Cross-Reference.*

Defects in other action, see post, § 14.

(a) Pendency of a prior suit in one state cannot be pleaded in abatement of a suit between the same parties, for the same cause, in a court of another state.—*SeEVERS v. Clement*, 28 Md. 426; *Cole v. Flitcraft*, 47 Md. 312.

### § 13(a). Actions at law and in equity.

#### *Cross-Reference.*

See ante, §§ 5, 8, 11.

### § 14. Defects in other action.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 15. Dismissal or other termination of other action.

#### *Cross-Reference.*

Judgment of dismissal as merger or bar of cause of action, see "Judgment," § 570.

(a) The first suit must be pending at the time of plea pleaded to effect an abatement of the second suit, and, if the first suit be dismissed before plea pleaded, it will prevent the abatement of the second suit.—*Leavitt v. Mowe*, 54 Md. 613.

**§ 16. Appeal or other proceeding for review in other action.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 17. Necessity and mode of making objection.**

*Cross-References.*

Form and requisites of plea, see "Pleading," § 106.

Necessity for verification of plea, see "Pleading," § 293.

Sufficiency of plea in equity, see "Equity," § 167.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**III. DEFECTS AND OBJECTIONS AS TO PARTIES AND PROCEEDINGS.**

*Cross-References.*

Grounds for dismissal or nonsuit, see "Dismissal and Nonsuit," §§ 56-58.

Necessity of raising objections as to parties by plea in abatement, see "Parties," §§ 75, 76, 80, 84, 94.

**§ 17(a). In general.**

*Cross-Reference.*

See post, §§ 19, 29, 32.

**§ 17(b). Destruction of papers.**

*Cross-Reference.*

See post, § 32.

**§ 18. Nature or form of action.**

(a) That the proper remedy in the action is trespass on the case, and not trespass vi et armis, may be pleaded in abatement.—*Warfield v. Walter*, 11 G. & J. 80.

**§ 19. Nonperformance of condition precedent.**

*Cross-References.*

Actions to set aside fraudulent transfers, see "Fraudulent Conveyances," § 241.

Payment of costs of former action, see "Costs," § 277.

(a) *Quære*, whether a plea in abatement will lie when a suit in the name of the state is not brought by the state's attorney, as required by law.—*McCauley v. State*, 21 Md. 556. [Cited and annotated in 21 L. R. A.

848, on effect of judgment on unauthorized appearance.]

(b) The changing of the name of a corporation by the Legislature does not abate an action pending by such corporation.—*Thomas v. Frederick County School*, 7 G. & J. 369.

**§ 20. Premature action.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 20(a). Action brought by party while in default.**

*Cross-Reference.*

See 1 Cent. Dig. Abate. & R., § 144.

No paragraphs in this digest. For cases in other states, see cross-reference to Century Digest, *supra*.

**§ 21. Fictitious plaintiff.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**Suing in name of decedent.**

*Cross-Reference.*

See post, § 24; 1 Cent. Dig. Abate. & R., §§ 146, 147.

No paragraphs in this digest. For cases in other states, see cross-reference to Century Digest, *supra*.

**§ 22. Disability or incapacity to sue.**

*Cross-Reference.*

Necessity of raising objection by plea in abatement, see "Parties," § 76.

(a) An action of replevin was abated on a plea that both parties were aliens, and the court therefore had not jurisdiction.—*Dumoussay v. Delevit*, 3 H. & McH. 151. (See *Poe*, Pleading, § 316.)

**§ 23. Plaintiff not real party in interest.**

**§ 24. Action in name of person deceased.**

**§ 25. Disability or privilege of defendant.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 26. Action against person deceased.**

(a) The death of one of the parties named as defendant in a writ before the suing out of the writ is matter of abatement.—*McLaughlin v. De Young*, 3 G. & J. 4.

**Removal of disability pending suit.**

*Cross-Reference.*

See post, § 35; 1 Cent. Dig. Abate. & R., § 159.

No paragraphs in this digest. For cases in other states, see cross-reference to Century Digest, *supra*.

**§ 27. Nonjoinder of party.****§ 28. Misjoinder of parties.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 29. Misnomer or misdescription of party.***Cross-Reference.*

Necessity of raising objection by plea in abatement, see "Parties," § 94.

(a) Quære, whether a plea in abatement will lie when a suit in the name of the state is not brought by the state's attorney, as required by law.—*McCauley v. State*, 21 Md. 556. [*Cited and annotated in 21 L. R. A.* 848, on effect of judgment on unauthorized appearance.]

(b) The changing of the name of a corporation by the Legislature does not abate an action pending by such corporation.—*Thomas v. Frederick County School*, 7 G. & J. 388.

**§ 30. Defects or irregularities in process or service.***Cross-Reference.*

Proceeding to trial where all parties are not served, see "Trial," § 1.

(a) A defendant cannot plead in abatement a variance between the writ and declaration without demanding oyer of the writ.—*Chapman v. Davis*, 4 Gill 166.

(b) A defendant who appears in a cause and, after a general imparlance, pleads the general issue, cannot, because of leave of court to amend granted the plaintiff, plead in abatement a variance between the writ and the second declaration, which variance also existed between the writ and the first declaration.—*Chapman v. Davis*, 4 Gill 166.

**§ 31. Variance between process and pleading.**

(a) A defendant, who appears in a cause, and, after a general imparlance, pleads the general issue to the plaintiff's declaration, cannot, because of a leave granted to the plaintiff to amend, plead in abatement a variance between the writ and the second declaration, which variance also existed between the writ and the first declaration.—*Chapman v. Davis*, 4 Gill 166.

(b) A defendant cannot plead in abate-

ment a variance between the writ and declaration without demanding oyer of the writ.—*Chapman v. Davis*, 4 Gill 166.

**§ 32. Defects or irregularities in pleadings or other proceedings.**

(a) Quære, whether a plea in abatement will lie when a suit in the name of the state is not brought by the state's attorney, as required by law.—*McCauley v. State*, 21 Md. 556. [*Cited and annotated in 21 L. R. A.* 848, on effect of judgment on unauthorized appearance.]

(b) The changing of the name of a corporation by the Legislature does not abate an action pending by such corporation.—*Thomas v. Frederick County School*, 7 G. & J. 388.

**§ 33. Disability of party pending suit in general.**

(a) If the plaintiff conveys the land to a third party, such conveyance is a bar to his recovery.—*Cresap v. Hutson*, 9 Gill 269. [*Cited and annotated in 33 L. R. A. (N. S.)* 925, on adverse possession due to ignorance or mistake as to boundary; in 35 L. R. A. (N. S.) 762, on effect of conveyance of land held adversely.]

(b) An action of replevin was abated on a plea that both parties were aliens, and the court therefore had not jurisdiction.—*Dumoussay v. Delevit*, 3 H. & McH. 151. (See *Poe*, Pleading, § 316.)

**§ 34. Marriage of female party pending suit.***Cross-Reference.*

Appointment of agent to prosecute suit, see "Husband and Wife," § 58.

(a) Where defendant wishes to avail himself of plaintiff's incapacity to sue, he must do so by plea, in abatement.—*Wilms v. White*, 26 Md. 380, 90 Am. Dec. 113.

(b) In a court of general jurisdiction, personal disability of the plaintiff to sue can be excepted to only by plea in abatement.—*Shivers v. Wilson*, 5 H. & J. 130.

(c) A bill was abated with costs by reason of the complainant's marriage.—*Manning v. Mills*, 1 Bland 133, note. (For present law see Code, art. 75, § 34, and annotation thereto.)

### § 35. Removal of disability pending suit.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### §§ 36, 37, 38. Reorganization or consolidation of corporation— Abatement and Revival.

#### Cross-Reference.

See "Corporations," §§ 580, 591.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 39. Dissolution of corporation.

#### Cross-Reference.

Dissolution of firm, see "Partnership," § 203.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 40. Necessity and mode of making objection.

#### Cross-References.

Form and requisites of plea, see "Pleading," §§ 106-111, 293.

Necessity of raising objections as to parties by plea in abatement, see "Parties," §§ 75, 76, 80, 84, 94.

Necessity of verification of plea, see "Pleading," § 293.

Proper mode of objecting to defects in process or service, see "Process," § 155.

(a) A plea of infancy should not be entered after answer of other matter and replication to such answer, without first withdrawing the answer under leave.—*Bush v. Linthicum*, 59 Md. 344.

(b) Where defendant wishes to avail himself of plaintiff's incapacity to sue, he must do so by plea in abatement.—*Wilms v. White*, 26 Md. 380, 90 Am. Dec. 113.

(c) A defendant cannot plead in abatement a variance between the writ and declaration without demanding oyer of the writ.—*Chapman v. Davis*, 4 Gill 166.

(d) A defendant who appears in a cause and, after a general imparlance, pleads the general issue, cannot, because of leave of court to amend granted the plaintiff, plead in abatement a variance between the writ and the second declaration, which variance also existed between the writ and the first declaration.—*Chapman v. Davis*, 4 Gill 166.

(e) The death of plaintiff before the im-

petration of the writ should be pleaded in abatement.—*Hawkins v. Bowie*, 9 G. & J. 428. [*Cited and annotated in 18 L. R. A. 840, on writ of error coram nobis.*]

(f) The death of one of several plaintiffs before suit brought can be taken advantage of only by plea in abatement.—*Hawkins v. Bowie*, 9 G. & J. 428. [*Cited and annotated in 18 L. R. A. 840, on writ of error coram nobis.*]

(g) In a court of general jurisdiction, personal disability of the plaintiff to sue can be excepted to only by plea in abatement.—*Shivers v. Wilson*, 5 H. & J. 130.

(h) A bill was abated with costs by reason of the complainant's marriage.—*Manning v. Mills*, 1 Bland 133, note. (For present law see Code, art. 75, § 34, and annotation thereto.)

## IV. TRANSFER OR DEVOLUTION OF TITLE, RIGHT, INTEREST, OR LIABILITY.

#### Cross-References.

Abatement of action by or against partnership by dissolution of firm, see "Partnership," § 203.

Abatement of mandamus proceedings, see "Mandamus," § 19.

Pending appeal or writ of error, see "Appeal and Error," § 330.

Termination of coverture pending action by or against married woman, see "Husband and Wife," § 223.

Waiver by appearance of objection to revival, see "Appearance," § 22.

### § 41. Plaintiff's title, right, or interest in general.

(a) If the plaintiff conveys the land to a third party, such conveyance is a bar to his recovery.—*Cresap v. Hutson*, 9 Gill 269. [*Cited and annotated in 33 L. R. A. (N. S.) 925, on adverse possession due to ignorance or mistake as to boundary; in 35 L. R. A. (N. S.) 762, on effect of conveyance of land held adversely.*]

(b) The plaintiff must have title at the time of trial, as well as when the suit is instituted.—*Cresap v. Hutson*, 9 Gill 269. [*Cited and annotated in 33 L. R. A. (N. S.) 925, on adverse possession due to ignorance or mistake as to boundary; in 35 L. R. A. (N. S.) 762, on effect of conveyance of land held adversely.*]

**§ 42. Defendant's title, interest, or liability in general.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 43. Insolvency or bankruptcy of individual party.**

*Cross-References.*

Right of bankrupt to sue, see "Bankruptcy," § 390.

Rights of trustee in bankruptcy as to pending actions by or against bankrupt, see "Bankruptcy," § 156.

Right to sue bankrupt, see "Bankruptcy," § 391.

(a) The defense that the defendant has applied for the benefit of the insolvent laws may be taken advantage of pending a suit, but cannot be in a subsequent proceeding after judgment.—State v. Reaney, 13 Md. 230.

**§ 44. Insolvency, bankruptcy, or receivership of corporation.**

**§ 45. Termination or devolution of representative or official capacity.**

*Cross-Reference.*

Termination by death, see post, § 65.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 46. Necessity and mode of making objection.**

(a) The defense that the defendant has applied for the benefit of the insolvent laws may be taken advantage of pending a suit, but cannot be in a subsequent proceeding after judgment.—State v. Reaney, 13 Md. 230.

**§ 47. Continuance or revival by or against successor in interest.**

*Cross-References.*

See 1 Cent. Dig. Abate. & R. §§ 239-244; 6 Cent. Dig. Bankr. §§ 631-635, 640-647; 12 Cent. Dig. Corp. §§ 2249-2251.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**V. DEATH OF PARTY AND REVIVAL OF ACTION.**

**(A) ABATEMENT OR SURVIVAL OF ACTION.**

*Cross-References.*

Affecting limitations, see "Limitation of Actions," §§ 80-83.

Affecting validity of order, see "Motions," § 46.

Appeal in criminal prosecution, see "Criminal Law," § 1070.

Death of debtor affecting lien to sustain action to set aside fraudulent transfer, see "Fraudulent Conveyances," § 241.

Death of party to contract as revocation, see "Contracts," § 249.

Death of personal representative pending action, see "Executors and Administrators," § 440.

Effect of debtor's death on lien acquired by creditors' suit, see "Creditors' Suit," § 36.

Party to appeal or writ of error, see "Appeal and Error," §§ 332-334.

Pending motion for new trial, see "New Trial," § 122.

Pending review of proceeding in justices' courts, see "Justices of the Peace," § 152.

Rights of action by or against personal representatives, see "Executors and Administrators," §§ 426, 427, 429, 430.

Substitution of party as affecting limitations, see "Limitation of Actions," § 125.

*Particular actions or proceedings.*

See "Admiralty," § 51; "Bankruptcy," § 25; "Contempt," § 48; "Ejectment," § 30; "Partition," § 28.

Against devisee to enforce debts of testator, see "Wills," § 847.

Election contests, see "Elections," § 282.

For causing death, see "Death," §§ 10, 29, 30.

For infringement of patent, see "Patents," § 284.

For penalties, see "Penalties," § 31.

For seduction, see "Seduction," § 10.

Probate and contest of wills, see "Wills," § 361.

To determine necessity of administration, see "Executors and Administrators," § 3.

To foreclose mortgage, see "Mortgages," § 416.

To set aside fraudulent transfer, see "Fraudulent Conveyances," § 244.

**§ 48. Death as cause of abatement in general.**

**§ 49. What law governs.**

*Cross-Reference.*

Actions by or against Indians, see "Indians," § 27.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 50. Statutory provisions.**

*Cross-References.*

Construction of repealing act, see "Statutes," § 232.

Subject and title of acts, see "Statutes," § 117.

Validity of retrospective laws, see "Constitutional Law."

(a) Code, art. 16, § 1, provides that no suit in chancery shall abate by the death of any

of the parties where the rights in the suit survive, and section 2 declares that, if any party to a suit in chancery shall die, it shall not be necessary to file a bill of revivor, but any of the surviving parties may file a suggestion of the death, setting forth when the death occurred, and who is legal representative, and how he is representative. Act 1892, p. 874, c. 654 (Code, art. 16, § 209), provides that, if a party to a suit in equity shall die before final decree, leaving heirs at law or representatives who should be made parties, it shall not be necessary to file an amended bill, but they may be brought in by a short petition setting forth their interest. *Held*, that an action to annul a fraudulent conveyance by a mother to a son, brought by a creditor of the vendor, to which both the vendor and vendee were made parties, did not abate on the death of the vendor, though the vendee was her only heir.—*Sinclair v. Auxiliary Realty Co.*, 99 Md. 223, 57 Atl. 664. [*Cited and annotated* in 23 L. R. A. (N. S.) 116, on conditions precedent to equitable remedies of creditors; in 33 L. R. A. (N. S.) 578, on exclusiveness of particular statutory method for revival of action.]

(b) The fact that the action is required by statute to be brought in the name of the state "for the use of the person entitled to damages," does not create any contractual relation between the state and defendant, nor authorize the suit to be carried on in the name of the state, on the death of the equitable plaintiff.—*State v. Baltimore & O. R. Co.*, 70 Md. 319, 17 Atl. 88. [*Cited and annotated* in 24 L. R. A. (N. S.) 844, on survival of statutory action for wrongful death to personal representatives of original beneficiary.]

(c) Under Code, art. 75, § 25, providing that actions for personal injuries and slander shall not survive upon the death of defendant, an action to recover consequential damages for an assault and battery committed on plaintiff's wife is not maintainable against the executrix of a decedent.—*Ott v. Kaufman*, 68 Md. 56, 11 Atl. 580. [*Cited and annotated* in 17 L. R. A. (N. S.) 570, on survival of husband's action for damages for personal injury to wife.]

(d) Acts 1861, c. 44 (Code, art. 93, § 104), making actions for illegal arrest or false imprisonment survive against the representatives of deceased persons, does not include actions for malicious prosecution.—*Clark v. Carroll*, 59 Md. 180.

(e) Where a party to a suit dies before appeal taken, the provisions of Code, art. 5, § 75, authorizing the making of new parties by process from the appellate court, are inapplicable, there being no appeal then pending. Art. 16, § 8, governs the case, under which the court below may direct such proceedings as may be necessary to advance the purposes of justice.—*Thomas v. Thomas*, 57 Md. 504. [*Cited and annotated* in 57 L. R. A. 603, on right to contest validity of divorce after death of one or both parties; in 1 L. R. A. (N. S.) 552, on vacating divorce decree after death of party; in 2 L. R. A. (N. S.) 243, as to whether alimony terminates on husband's death.]

(f) *Held*, in an action on a sheriff's bond, that where the original writ was indorsed in the name of the state for the use of another, and, on a return of "nonsuit," other writs were issued, but the usee died before the issuance of the last writ by which defendants were brought into court, such death did not abate the writ, and it was immaterial whether the last writ had the name of the deceased party indorsed on it as the usee or not, as the continuity of the action was preserved by reason of the survival of the legal plaintiff, the state.—*Logan v. State*, 39 Md. 177.

(g) The act of 1785, c. 80, and the act of 1798, c. 101, sec. 4, subd. 14, authorizing representatives of parties deceased to prosecute certain actions, embrace only actions for causes which do not die with the person. They do not operate to prevent the abatement of actions which previously died with the person.—*Baltimore & O. R. Co. v. Ritchie*, 31 Md. 191. (But see Code, Art. 75, § 25.)

(h) An action for injuries to the person abates absolutely by death of the plaintiff before verdict.—*Baltimore & O. R. Co. v. Ritchie*, 31 Md. 191. (But see Code, art. 75, § 25.)

(i) After an action for personal injuries was commenced, the plaintiff died, and his executors appeared to prosecute the suit. *Held*, that the suit abated without any formal plea, and that the defendant could take advantage of such abatement by asking the instructions of the court.—*Baltimore & O. R. Co. v. Ritchie*, 31 Md. 191. (For present law see Code, art. 75, secs. 25, *et seq*; art. 93, sec. 104.)

(j) Upon the death of a respondent, the complainant may revive against the widow and heirs, as well as against the executor, and, upon allegation in the bill of revivor of an insufficiency of personal estate, may have the decree for the sale of real estate authorized by act of 1785, ch. 72 (Code, art. 16, § 218).—*Glenn v. Hebb*, 17 Md. 260.

(k) Under the act of 1820, c. 161, §§ 4, 5 (Code, art. 16, § 1), a cause in equity does not abate by the complainant's death.—*Glenn v. Hebb*, 17 Md. 260.

(l) Under the act of 1785, c. 80, sec. 11 (Code, art. 75, § 25), providing that no action shall abate by the death of either of the parties, it is the duty of the court to continue a case standing under a rule of reference until an award is returned, and the death of both parties while it remains under that rule does not abate the action.—*Price v. Tyson*, 2 G. & J. 475.

(m) Death of lessor, or of one of several lessors, in ejectment, does not abate the suit.—*Howard v. Moale*, 2 H. & J. 249; *Stevenson v. Howard*, 3 H. & J. 554. *Contra*, see *Howard v. Gardiner*, 3 H. & McH. 98.

(n) An action for overflowing lands of the testator is not maintainable by his executor.—*McLaughlin v. Dorsey*, 1 H. & McH. 224. (Changed by Code, art. 93, § 104.)

(o) An act of Assembly prescribing the mode of reviving actions at common law, which may be abated by the death of either party, and providing that if the action involves title to land, and the heir or devisee be an infant, such action shall not be tried during his minority, *held*, not to apply to a creditors' suit where, pending the same, the defendant dies.—*Tessier v. Wyse*, 3 Bland 28.

(p) A statutory proceeding, by *prochein ami*, to have the lands of infants sold, does not abate by the death of one of the infants, it not being an adversary suit.—*Tilly v. Tilly*, 2 Bland 436.

## §§ 51, 52. Causes of action which survive.

### § 53.—Actions on contract.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 54.—Actions for personal injuries.

#### Cross-References.

Statutory provisions, see ante, § 50.

Injuries resulting in death, see "Death," § 10.

(a) Under Code, art. 75, § 25, providing that actions for personal injuries and slander shall not survive against an administrator or executor, an action to recover consequential damages for an assault and battery on plaintiff's wife is not maintainable against the executrix of deceased, as the right depends upon the nature of the action, and not upon the character of damages claimed.—*Ott v. Kaufman*, 68 Md. 56, 11 Atl. 580. [*Cited and annotated in 17 L. R. A. (N. S.) 570, on survival of husband's action for damages for personal injury to wife.*]

### § 55.—Actions for injuries to property.

#### Cross-Reference.

See ante, § 54.

(a) An action for damages to decedent's property caused by smoke and vibrations produced by defendant's passing trains did not abate upon her death, but devolved upon her executor under Code, art. 75, § 25, relating to the survival of certain actions.—*Baltimore Belt R. Co. v. Sattler*, 105 Md. 264, 65 Atl. 752.

(b) Code, art. 16, § 1, provides that no suit in chancery shall abate by the death of any of the parties where the rights in the suit survive, and section 2 declares that, if any party to a suit in chancery shall die, it shall not be necessary to file a bill of revivor, but any of the surviving parties may file a suggestion of the death, setting forth when the death occurred, and who is the legal representative, and how he is representative. Act 1892, p.

874, c. 654 (Code, art. 16, § 209), provides that, if a party to a suit in equity shall die before final decree, leaving heirs at law or representatives who should be made parties, it shall not be necessary to file an amended bill, but they may be brought in by a short petition setting forth their interest. *Held*, that an action to annul a fraudulent conveyance by a mother to her son, brought by a creditor of the vendor, to which both the vendor and vendee were made parties, did not abate on the death of the vendor, though the vendee was her only heir.—*Sinclair v. Auxiliary Realty Co.*, 99 Md. 223, 57 Atl. 664. [Cited and annotated in 23 L. R. A. (N. S.) 116, on conditions precedent to equitable remedies of creditors; in 33 L. R. A. (N. S.) 578, on exclusiveness of particular statutory method for revival of action.]

(c) The death of the plaintiff does not abate an action of replevin.—*Fisher v. Beall*, 1 H. & J. 31.

(d) An action for overflowing lands of the testator is not maintainable by his executor.—*McLaughlin v. Dorsey*, 1 H. & McH. 224. (Changed by Code, art. 93, § 104.)

#### § 56.—Actions relating to specific property.

##### *Cross-Reference.*

See ante, 55.

(a) An action for overflowing lands of the testator is not maintainable by his executor.—*McLaughlin v. Dorsey*, 1 H. & McH. 224. (Changed by Code, art. 93, § 104.)

(b) The death of the plaintiff does not abate an action of replevin.—*Fister v. Beall*, 1 H. & J. 31.

#### § 57.—Statutory actions.

##### *Cross-Reference.*

See ante, §§ 50, 52, 54, 55.

(a) Code, art. 16, § 1, provides that no suit in chancery shall abate by the death of any of the parties where the rights in the suit survive, and section 2 declares that, if any party to a suit in chancery shall die, it shall not be necessary to file a bill of revivor, but any of the surviving parties may file a suggestion of the death, setting forth when the death occurred, and who is the legal representative, and how he

is representative. Act 1892, p. 874, c. 654 (Code, art. 16, § 209), provides that, if a party to a suit in equity shall die before final decree, leaving heirs at law or representatives who should be made parties, it shall not be necessary to file an amended bill, but they may be brought in by a short petition setting forth their interest. *Held*, that an action to annul a fraudulent conveyance by a mother to her son, brought by a creditor of the vendor, to which both the vendor and vendee were made parties, did not abate on the death of the vendor, though the vendee was her only heir.—*Sinclair v. Auxiliary Realty Co.*, 99 Md. 223, 57 Atl. 664. [Cited and annotated in 23 L. R. A. (N. S.) 116, on conditions precedent to equitable remedies of creditors; in 33 L. R. A. (N. S.) 578, on exclusiveness of particular statutory method for revival of action.]

#### § 58. Actions and proceedings which abate.

##### *Cross-References.*

See ante, §§ 51-56.

Quo warranto proceedings, see "Quo Warranto," § 23.

(a) Acts 1861, c. 44 (Code, art. 93, § 104), making actions for illegal arrest or false imprisonment survive against the representatives of deceased persons, does not include actions for malicious prosecution.—*Clark v. Carroll*, 59 Md. 180.

(b) The act of 1785, c. 80, and the act of 1798, c. 101, § 4, subd. 14, authorizing representatives of parties deceased to prosecute certain actions, embrace only actions for causes which do not die with the person. They do not operate to prevent the abatement of actions which previously died with the person.—*Baltimore & O. R. Co. v. Ritchie*, 31 Md. 191. (But see Code, art. 75, § 25.)

(c) An action for injuries to the person abates absolutely by death of the plaintiff before verdict.—*Baltimore & O. R. Co. v. Ritchie*, 31 Md. 191. (But see Code, art. 75, § 25.)

(d) A suit in equity abates by the death of any of the parties materially interested.—*Glenn v. Clapp*, 11 G. & J. 1. (But see Code, art. 16, § 1.) [Cited and annotated in 21 L.



R. A. 50, on purchaser at judicial sale as bona fide purchaser; in 23 L. R. A. (N. S.) 410, on applicability of caveat emptor rule to partition sales.]

(e) Death of lessor, or of one of several lessors, in ejectment, does not abate the suit.—Howard v. Moale, 2 H. & J. 249; Stevenson v. Howard, 3 H. & J. 554. *Contra*, see Howard v. Gardiner, 3 H. & McH. 98.

(f) A statutory proceeding, by prochein ami, to have the lands of infants sold, does not abate by the death of one of the infants, it not being an adversary suit.—Tilly v. Tilly, 2 Bland 436.

### § 59. Death of plaintiff.

#### *Cross-Reference.*

Death of ward pending action on guardian's bond by probate judge, see "Guardian and Ward," § 182.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 60.—Sole plaintiff.

(a) The death of plaintiff abates the suit, and no further proceedings can be taken therein until revived, so that testimony in behalf of defendant, given after the death of plaintiff and before revival, must be stricken out.—Reck v. Reck, 110 Md. 497, 73 Atl. 144.

(b) *Held*, in an action on a sheriff's bond, that where the original writ was indorsed in the name of the state for the use of another, and, on a return of "nonsuit," other writs were issued, but the usee died before the issuance of the last writ by which defendants were brought into court, such death did not abate the writ, and it was immaterial whether the last writ had the name of the deceased party indorsed on it as the usee or not, as the continuity of the action was preserved by reason of the survival of the legal plaintiff, the state.—Logan v. State, 39 Md. 177.

(c) Where suit was brought on a sheriff's bond to recover fees placed in his hands by a clerk of the circuit court, and the writ was indorsed "State of Maryland, at the Instance and for the Use of N.," the fact that the last writ under which the defendant was

served was issued and indorsed after the death of N. was not ground for discontinuing the action, as the state was and continued to be the legal plaintiff in the action, and that the writ was in fact renewed in due time, commanding defendants to answer an action at the suit of the state, prevented a discontinuance.—Logan v. State, 39 Md. 177.

(d) The fact that the action is required by statute to be brought in the name of the state "for the use of the person entitled to damages," does not create any contractual relation between the state and defendant, nor authorize the suit to be carried on in the name of the state, on the death of the equitable plaintiff.—State v. Baltimore & O. R. Co., 70 Md. 319, 17 Atl. 88. [*Cited and annotated* in 24 L. R. A. (N. S.) 844, on survival of statutory action for wrongful death to personal representatives of original beneficiary.]

(e) Under the act of 1820, c. 161, §§ 4, 5 (Code, art. 16, § 1), a cause in equity does not abate by the complainant's death.—Glenn v. Hebb, 17 Md. 260.

(f) An action at law by two partners, on the death of one, proceeds in the name of the survivor.—Keirle v. Shriver, 11 G. & J. 405.

(g) Where a levy court was abolished pending a suit in the name of the state for the use of such court against the obligors in a collector's bond, a plea in abatement that the levy court had been extinguished is no objection to the further prosecution of the action.—State v. Dorsey, 3 G. & J. 75.

(h) Where a suit is brought on a private or a public bond for the use of an individual, he is not the legal plaintiff. His death, pending the suit, does not affect the proceedings, and is not the subject of a plea.—State v. Dorsey, 3 G. & J. 75.

(i) A creditors' bill does not abate by the death of the original complainant, or any creditor who has come in, if there be anyone competent to maintain the suit; but in the case of an heir or devisee defendant, the suit abates.—Austin v. Cochran, 3 Bland 337.

### § 61.—One of two or more plaintiffs.

#### Cross-References.

See 17 Cent. Dig. Eject. § 118.

See ante, § 53.

Pending appeal or other review, see post § 69

(a) A creditors' suit or a suit in the nature thereof does not abate by death of a plaintiff or any creditor who may come in, if there is a plaintiff or creditor competent to prosecute.—*Middendorf v. Baltimore Refrigerating & Heating Co.*, 117 Md. 443, 84 Atl. 150.

(b) The death of a bondholder, unnecessarily made a party to a suit to foreclose a corporate mortgage, does not abate it.—*Middendorf v. Baltimore Refrigerating & Heating Co.*, 117 Md. 443, 84 Atl. 150.

(c) The fact that the action is required by statute to be brought in the name of the state "for the use of the person entitled to damages," does not create any contractual relation between the state and defendant, nor authorize the suit to be carried on in the name of the state, on the death of the equitable plaintiff.—*State v. Baltimore & O. R. Co.*, 70 Md. 319, 17 Atl. 88. [*Cited and annotated* in 24 L. R. A. (N. S.) 844, on survival of statutory action for wrongful death to personal representatives of original beneficiary.]

(d) Where suit was brought on a sheriff's bond to recover fees placed in his hands by a clerk of the circuit court, and the writ was indorsed, "State of Maryland, at the Instance and for the Use of N.," the fact that the last writ under which the defendant was served was issued and indorsed after the death of N. was not ground for discontinuing the action, as the state was and continued to be the legal plaintiff in the action, and that the writ was in fact renewed in due time, commanding defendants to answer an action at the suit of the state, prevented a discontinuance.—*Logan v. State*, 39 Md. 177.

(e) *Held*, in an action on a sheriff's bond, that where the original writ was indorsed in the name of the state for the use of another, and, on a return of "nonsuit," other writs were issued, but the usee died before the

issuance of the last writ by which defendants were brought into court, such death did not abate the writ, and it was immaterial whether the last writ had the name of the deceased party indorsed on it as the usee or not, as the continuity of the action was preserved by reason of the survival of the legal plaintiff, the state.—*Logan v. State*, 39 Md. 177.

(f) An action at law by two partners, on the death of one, proceeds in the name of the survivor.—*Keirle v. Shriver*, 11 G. & J. 405.

(g) Where a suit is brought on a private or a public bond for the use of an individual, he is not the legal plaintiff. His death, pending the suit, does not affect the proceedings, and is not the subject of a plea.—*State v. Dorsey*, 3 G. & J. 75.

(h) A creditors' bill does not abate by the death of the original complainant, or any creditor who has come in, if there be any one competent to prosecute the suit; but, in case of an heir or devisee defendant, the suit abates.—*Austin v. Cochran*, 3 Bland 337.

### § 62. Death of defendant.

### § 63.—Sole defendant.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 64.—One of two or more defendants.

(a) Where the defendants in a bill derive title under, or in opposition to, one and the same deed, upon the true construction of which all their titles must depend, and one of them dies, the suit will abate as to all.—*Neale v. Hagthorp*, 3 Bland 551. [*Cited and annotated* in 22 L. R. A. (N. S.) 455, on the right of next of kin to maintain action in interest of estate.]

### § 65. Death of party in representative or official capacity.

#### Cross-Reference.

Death of personal representative pending action, see "Executors and Administrators," § 440.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 66. Death of both parties.

### Cross-Reference.

Pending appeal on other review, see post, § 69.

(a) Under Act 1785, c. 80, § 11 (Code, art. 75, § 25), providing that no action shall abate by the death of either of the parties, it is the duty of the court to continue a case standing under a rule of reference until an award is returned, and the death of both parties while it remains under that rule does not abate the action.—*Price v. Tyson*, 2 G. & J. 475.

## § 67. Death after verdict, decision, or interlocutory judgment.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 68. Death after final judgment.

### Cross-References.

Affecting right to conveyance of property sold under execution, see "Execution," § 306.

As suspending operation of judgment, see "Judgment," § 852.

Effect of death of debtor or creditor after issue of execution, see "Execution," §§ 117, 118.

(a) Where a party to a suit dies before appeal taken, the provisions of Code, art. 5, § 75, authorizing the making of new parties by process from the appellate court, are inapplicable, there being no appeal then pending. Art. 16, § 8, governs the case, under which the court below may direct such proceedings as may be necessary to advance the purposes of justice.—*Thomas v. Thomas*, 57 Md. 504. [Cited and annotated in 57 L. R. A. 603, on right to contest validity of divorce after death of one or both parties; in 1 L. R. A. (N. S.) 552, on vacating divorce decree after death of party; in 2 L. R. A. (N. S.) 243, as to whether alimony terminates on husband's death.]

## § 69. Death pending appeal or other review.

### Cross-References.

See ante, §§ 55, 57, 68.

As abating appeal in criminal prosecutions, see "Criminal Law," § 1070.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 70. Necessity and mode of suggesting death as cause of abatement.

(a) After an action for personal injuries was commenced, the plaintiff died, and his executors appeared to prosecute the suit. *Held*, that the suit abated without any formal plea, and that the defendant could take advantage of such abatement by asking the instructions of the court.—*Baltimore & O. R. Co. v. Ritchie*, 31 Md. 191. (For present law see Code, art. 75, §§ 25 *et seq.*; art. 93, § 104.)

## (B) CONTINUANCE OR REVIVAL OF ACTION.

### Cross-References.

Dismissal for failure to revive, see "Dismissal and Nonsuit," § 60.

In marine court, see "Courts," § 176.

In suit in admiralty, see "Admiralty," § 51.

Necessity of revival on death of party to judgment, see "Judgment," § 860.

On appeal or writ of error, see "Appeal and Error," § 334.

On death of party pending review of proceedings in justices' courts, see "Justices of the Peace," § 152.

Review of objections to failure to revive action, see "Appeal and Error," § 189.

Review of rulings as dependent on prejudicial nature of error, see "Appeal and Error," § 1036.

Revival in trial court after remand from appellate court, see "Appeal and Error," § 1203.

Revival of Indian depredation claim in United States Court of Claims, see "Courts," §§ 456, 462.

Revival of judgment, see "Judgment," §§ 864, 865.

Substitution of party as affecting limitations, see "Limitation of Actions," § 125.

## § 71. Nature and necessity.

### Annotation.

Exclusiveness of particular statutory method for revival of action.—33 L. R. A. (N. S.) 576, note.

(a) Code, art. 16, § 8, relating to revival of actions, *held* not to apply to a suit where a party unnecessarily joined died prior to final decree.—*Middendorf v. Baltimore Refrigerating & Heating Co.*, 117 Md. 443, 84 Atl. 150.

(b) Where issues involving a will were sent from an orphans' court to a court of law on application of two parties, and one of them died before issues were tried, leaving a will, by which her interest in the es-

tate devolved on other persons, the court of law had no power, on suggestion of death, to substitute new parties, no special provision being made anywhere for making new parties in the orphans' court on the death of litigants.—*Diffenderffer v. Griffith*, 57 Md. 81.

(c) If, upon suggestion of the death of a party to a suit in equity, no action is taken, it will be presumed that none was considered necessary.—*Appold v. Prospect Bldg. Ass'n*, 37 Md. 457.

(d) In a suit to foreclose a mortgage, on the death of complainants before sale, but after decree, the necessity of a revival of the suit as to the representatives of the deceased party will not be obviated by the agreement of the surviving parties that the interest of the deceased has been extinguished.—*Glenn v. Clapp*, 11 G. & J. 1. [*Cited and annotated in 21 L. R. A. (N. S.) 50, on purchaser at judicial sale as bona fide purchaser; in 33 L. R. A. (N. S.) 410, on applicability of caveat emptor rule to partition sales.*]

(e) Act 1797, c. 114, § 4 (Code, art. 16, § 6) directing that, if a chancery cause is set for hearing and one of the parties dies before decree, the cause shall not abate, etc., cannot apply in a suit to declare a deed absolute to be a mortgage, as a decree directing a reconveyance of the land to a party dead, on paying money into the court, would be ineffectual, a bill of revivor being the proper remedy in such case.—*Brogden v. Walker*, 2 H. & J. 285.

## § 72. Persons required or entitled to continue or revive action.

*Cross-Reference.*

See ante, §§ 54, 71.

(a) An application to revive a suit in equity, upon suggestion of the death of the complainant, should, under the law and practice in Maryland, be made by the heir at law of such complainant, if the subject-matter of the controversy is real estate. If personal property only is involved, the executor or administrator is the proper person to make the application.—*Hawkins v. Chapman*, 36 Md. 83.

(b) The defendant to a bill in equity is en-

titled to revive the decree which had abated by the death or marriage of some of the parties, in order that he may be allowed his costs and charges.—*Ridgely v. Bond*, 18 Md. 433.

(c) Upon the abatement of a suit after decree, the defendant is entitled to revive, if his adversary will not, or where he can derive a benefit from the further proceedings in the suit.—*Ridgely v. Bond*, 18 Md. 433.

(d) An appeal from a decree of the chancellor cannot be taken, after the death of the only complainant in the cause, in the name of such complainant.—*Owings v. Owings*, 3 G. & J. 1.

(e) Where a decree has been passed affecting both real and personal estate, and the cause abates on the death of either party, it may be partially revived by or against the heir or personal representative of such party.—*Owings' Case*, 1 Bland 370, 17 Am. Dec. 311.

## § 73. Persons against whom action may be continued or revived.

(a) Where, in an action on a joint contract, one of the contractors died *pendente lite*, the action could only be continued against the survivor, and not jointly against such survivor and the executors of the deceased's co-contractor.—*Biggs Co. v. Langhammer*, 103 Md. 94, 63 Atl. 198.

(b) On the death of a party to an action involving real property the heir of the deceased party must be brought in as successor.—*Sinclair v. Auxiliary Realty Co.*, 99 Md. 223, 57 Atl. 264. [*Cited and annotated in 23 L. R. A. (N. S.) 116, on conditions precedent to equitable remedies of creditors; in 33 L. R. A. (N. S.) 578, on exclusiveness of particular statutory method for revival of action.*]

(c) Under Code, art. 50, § 4, requiring that, on the death of a defendant sued jointly with another, a separate suit against his administrator shall be docketed, it is error to revive an action against husband and wife, after the husband's death, against his administrator, so as to effect a joinder of the wife and administrator, as a judgment

against the wife will be *de bonis propriis*, while that against the administrator will be *de bonis testatoris*.—*Wolfe v. Murray*, 96 Md. 727, 54 Atl. 876.

(d) Upon the death of a respondent, the complainant may revive against the widow and heirs, as well as against the executor, and, upon allegation in the bill of revivor of an insufficiency of personal estate, may have the decree for the sale of real estate authorized by act of 1785, ch. 72 (Code, art. 16, § 218).—*Glenn v. Hebb*, 17 Md. 260.

(e) Where, after a decree affecting both real and personal estate, the suit abates by the death of a party, it must be revived by or against the heir, as well as the personal representative, that the decree may be fully executed.—*Owings' Case*, 1 Bland 370, 17 Am. Dec. 311.

(f) On defendant's death pending an action of debt, etc., an executor *de son tort* may be summoned in, there being no legal executor or administrator.—*Norfolk v. Gantt*, 2 H. & J. 435.

#### § 73(a). Death of one of two or more plaintiffs.

*Cross-Reference.*

See ante, § 72.

#### § 73(b). Death of one of two or more defendants.

*Cross-Reference.*

See ante, § 73.

#### § 74. Time of taking proceedings.

*Cross-Reference.*

See ante, § 71.

(a) In a suit filed April 22, 1901, to vacate a fraudulent conveyance of land on a claim of indebtedness of the vendor dating from 1885 the vendor and vendee were made defendants. The vendor answered on the day suit was filed, admitting the indebtedness, but denying fraudulent intent. The vendee answered May 28, 1901, denying the fraud, and filed with his answer as an exhibit the affidavit of the vendor that she had not authorized any person to file an answer for her, and that she was never indebted to plaintiff. Plaintiff died May 31, 1901. The vendor died January 29, 1902, and the vendee died May 1, 1902, having on January 3,

1902, deeded the property to another. On March 18, 1902, a corporation purchased the property, and on May 22, 1902, discovering the suit, filed a petition setting up interest, and asked to be made a party, which was granted. After various other steps in the proceedings, the plaintiff's administrator filed a petition on June 1, 1903, to revive the action, and have himself made plaintiff. *Held*, on the corporation's demurrer to the petition and original bill, that laches could not be predicated of the administrator's failure, prior to the death of the vendor, to take notice of the vendor's affidavit.—*Sinclair v. Auxiliary Realty Co.*, 99 Md. 223, 57 Atl. 664. [Cited and annotated in 23 L. R. A. (N. S.) 116, on conditions precedent to equitable remedies of creditors; in 33 L. R. A. (N. S.) 578, on exclusiveness of particular statutory method for revival of action.]

(b) Nor was it laches for the administrator to fail to take notice of the fraudulent vendee's suggestion of the abatement of the suit by the death of the original plaintiff.—*Sinclair v. Auxiliary Realty Co.*, 99 Md. 223, 57 Atl. 664.

(c) Laches could not be imputed because of the administrator's delay of four days from the time letters were issued to him in the District of Columbia on the estate of the original plaintiff and the filing of his petition to be made plaintiff in the cause, it appearing that after her death a contest arose as to the appointment, which was not adjusted until three days before the letters were issued.—*Sinclair v. Auxiliary Realty Co.*, 99 Md. 223, 57 Atl. 664.

(d) The administrator's failure on February 14, 1902, at the time of procuring an order (which was subsequently revoked) admitting him as plaintiff, to mention the death of the fraudulent vendor, and to make the first purchaser *pendente lite* a party, was not laches.—*Sinclair v. Auxiliary Realty Co.*, 99 Md. 223, 57 Atl. 664.

(e) Code, art. 75, § 25, provides that no action of ejectment, etc., shall abate by the death of any of the parties to such action, but, upon the death of a defendant, the action shall be continued, and the heir or other person interested on the part of the defend-

ant may appear to such action, and, in case the proper person to defend does not appear at the court at which the death is suggested, plaintiff may issue a summons returnable to the next court, etc. *Held*, that a plaintiff must make the suggestion of defendant's death not later than the second term after he is informed thereof, if he wishes to make the widow and heirs of defendant parties to the action.—*Shipley v. Johns*, 72 Md. 542, 20 Atl. 180.

(f) Where executors are substituted for deceased plaintiff July 31, 1872, a plea of *ne unques executor*, filed November 19, 1872, comes too late.—*Barton Coal Co. v. Cox*, 39 Md. 1.

### § 75. Application and proceedings thereon.

#### *Cross-References.*

Proceedings in equity by bill of revivor, see "Equity," § 804.

Sufficiency of notice of motion, see "Motions," § 21.

(a) Where the parties to a cause standing under a rule of reference die before an award returned, and there is ground to warrant the county court in reinstating the cause upon the trial docket, the regular course is to move for its reinstatement in the name of the original parties. When that is ordered, their death should next be suggested, then their representatives summoned to appear, and, upon their appearance, the cause proceeds as in other cases.—*Price v. Tyson*, 2 G. & J. 475.

(b) Act 1820, c. 161 (Code, art. 16, §§ 1 *et seq.*), relating to the revival of suits in equity which had abated by death, is cumulative, and does not take away the remedy by bill.—*Hall v. Hall*, 1 Bland 130. [*Cited and annotated* in 33 L. R. A. (N. S.) 579, on exclusiveness of particular statutory method for revival of action.]

(c) Application for new party to be entered on the death of complainant must be by petition or motion reduced to writing, suggesting the death and praying to be made a party.—*Labes v. Monker*, 1 Bland 130, note.

(d) Under Acts 1820, c. 161 (see Code, art. 16, §§ 1 *et seq.*), relating to new parties en-

tered on the death of a complainant, and requiring the court to be satisfied of the death and of the applicant being the legal representative, the proof required will be an exhibition of the letters, or an exemplification thereof, or a certificate of the register under seal of their having been issued, or an affidavit of the death and administration.—*Labes v. Monker*, 1 Bland 130, note.

(e) Act 1820, c. 161 (Code, art. 16, §§ 1 *et seq.*), only gives a new and more expeditious mode of reviving a suit, where the bill of revivor would lie without the statute.—*Griffith v. Bronaugh*, 1 Bland 547.

### § 76. Order for continuance or revival.

#### *Cross-References.*

Conditional order, see ante, § 75.

Correction of record nunc pro tunc as ground for impeaching judgment by motion to quash execution, see "Judgment," § 504.

Waiver by appearance of formal order, see "Appearance," § 20.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 77. Proceedings after continuance or revival.

(a) Where an executor, pending a suit against him, dies after narr. filed, and the administrator is made a party, a new narr. need not be filed.—*Mitchell v. Williamson*, 9 Gill 71.

(b) The lessor of plaintiff in ejectment died pending the action, and his heirs at law were made parties in his place without objection, and the cause continued several terms and the plots amended. *Held*, that it was not competent for defendant to defeat the action by giving evidence that one of the heirs was an infant when she was made a party, and that evidence that she was an infant at the time of the trial would not entitle defendant to a verdict against the other heirs who were of full age.—*James v. Boyd*, 1 H. & G. 1.

(c) An act of Assembly prescribing the mode of reviving actions at common law, which may be abated by the death of either party, and providing that if the action involves title to land, and the heir or devisee be an infant, such action shall not be tried during his minority, *held*, not to apply to a

creditor's suit where, pending the same, the defendant dies.—*Tessier v. Wyse*, 3 Bland 28.

## VI. WAIVER OF GROUNDS OF ABATEMENT AND TIME AND MANNER OF PLEADING IN GENERAL.

### *Cross-References.*

Necessity of raising objections as to parties by plea in abatement, see "Parties," §§ 75, 76, 80, 84, 94.

Requisites and sufficiency of pleas in abatement, see "Attachment," §§ 253-259; "Criminal Law," §§ 278-285; "Pleading," §§ 106-111, 293.

Waiver by appearance, see "Appearance."

§ 78. Defects and objections which may be waived.

§ 79. Stipulations and other agreements.

§ 80. Failure to make objection in general.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 81. Delay in making objection or filing plea.

(a) A plea in abatement cannot be filed after a plea in bar unless the facts relied on to abate the action arise after the filing of such plea in bar.—*Carroll v. Building Committee of Emanuel M. E. Church, South*, 113 Md. 150, 77 Atl. 128.

(b) The defense that the defendant has applied for the benefit of the insolvent laws may be taken advantage of pending a suit, but cannot be in a subsequent proceeding after judgment.—*State v. Reaney*, 13 Md. 230.

§ 82. Pleading out of order.

### *Cross-Reference.*

See § 81.

(a) A plea of infancy should not be entered after answer of other matter and replication to such answer, without first withdrawing the answer under leave.—*Bush v. Linthicum*, 59 Md. 344.

(b) Pleas in abatement, notwithstanding issues were joined on the replication to one of them, were effectually waived by plea in bar.—*Cruzen v. McKaig*, 57 Md. 454.

(c) A plea in abatement is not allowable

after a plea in bar to the action has been filed.—*Webster v. Byrnes*, 32 Md. 86.

(d) A defendant, who appears in a cause, and, after a general imparlance, pleads the general issue to the plaintiff's declaration, cannot, because of a leave granted to the plaintiff to amend, plead in abatement a variance between the writ and the second declaration, which variance also existed between the writ and the first declaration.—*Chapman v. Davis*, 4 Gill 166.

(e) No dilatory plea can be received after the rule day, unless the fact upon which it is founded occurred subsequent to the rule day.—*Whittington v. Farmers' Bank*, 5 H. & J. 489.

§ 83. Demurring and proceedings thereon.

### *Cross-Reference.*

Appearing and demurring, see "Appearance," §§ 19, 24.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 84. Pleading to merits and further proceedings.

### *Cross-References.*

See ante, § 83.

Appearing and pleading to the merits, see "Appearance," § 24.

(a) The right to rely on a plea in abatement is waived by including in the same pleading an answer to the merits.—*Glenn v. Williams*, 60 Md. 93.

(b) Pleas in abatement, notwithstanding issues were joined on the replication to one of them, were effectually waived by plea in bar.—*Cruzen v. McKaig*, 57 Md. 457.

(c) A plea in abatement is not allowable after a plea in bar to the action has been filed.—*Webster v. Byrnes*, 32 Md. 86.

(d) The fact of a suit having been improvidently brought against a party, dead at the time of its institution, or the sheriff's return of mortuus est, are not, in themselves, any reasons why the administrators who appear for the deceased party and plead should, after the suit has progressed, move to abate the suit because the original writ was issued against a party when he was dead, and because their appearance was improperly entered.—*Young v. Citizens' Bank*, 31 Md. 66.

### § 85. Pleading in abatement and in bar.

#### *Cross-References.*

See ante, § 84.

Election contest, see "Elections," § 296.

(a) Matters in abatement and matters in bar cannot be pleaded together, as pleas in bar necessarily supersede those in abatement.—*Carroll v. Building Committee of Emanuel M. E. Church, South*, 113 Md. 150, 77 Atl. 128.

(aa) The right to rely on a plea in abatement is waived by including in the same pleading an answer to the merits.—*Glenn v. Williams*, 60 Md. 93.

(b) Pleas in abatement, notwithstanding issues were joined on the replication to one of them, were effectually waived by plea in bar.—*Cruzen v. McKaig*, 57 Md. 457.

(c) A plea in abatement is not allowable after a plea in bar to the action has been filed.—*Webster v. Byrnes*, 32 Md. 86.

(d) The fact of a suit having been improvidently brought against a party, dead at the time of its institution, or the sheriff's return of *mortuus est*, are not, in themselves, any reasons why the administrators who appear for the deceased party and plead should, after the suit has progressed, move to abate the suit because the original writ was issued against a party when he was dead, and because their appearance was im-

properly entered.—*Young v. Citizens' Bank*, 31 Md. 66.

(e) Pleas in abatement will be stricken out, when pleaded with pleas in bar.—*Deheaulme v. Boisneuf*, 4 H. & McH. 413.

### § 86. Failure to insist on judgment on plea.

#### *Cross-Reference.*

See also "Appearance," § 19.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 87. Waiver of matter arising after issue.

### § 88. Waiver of failure to revive action.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## ABBREVIATIONS.

#### *Cross-References.*

In description of land on delinquent tax list, see "Taxation," § 627.

In description of land on tax roll, see "Taxation," § 421.

In indictment or information, see "Indictment and Information," § 78.

In pleading, see "Pleading," § 29.

Judicial notice, see "Evidence," § 16.

Of August 2 ("8/2"), see "Appeal and Error," § 387.

Of names of persons, see "Names," § 5.

Parol or extrinsic evidence as to meaning of abbreviations in written instruments, see "Evidence," §§ 455-457.

Variance in prosecutions for forgery, see "Forgery," § 34.

## ABDUCTION.

#### *Scope-Note.*

[INCLUDES taking, enticing away, detaining, or harboring a female, without her consent, or, if under the age of consent, without the consent of her parents, guardian, etc., for the purpose of compelling her to marry or to be defiled, or for the purpose of sexual intercourse, concubinage, or prostitution, and attempts to commit such offenses and aiding therein; nature and extent of criminal responsibility therefor, and grounds of defense; prosecution and punishment of such acts as public offenses; and civil liability therefor.

[EXCLUDES enticing away servant from his employment (see "*Master and Servant*"); kidnapping in general (see "*Kidnapping*"); civil liability to parent for enticing away child (see "*Parent and Child*"); and seduction (see "*Seduction*"). For complete list of matters excluded, see cross-references, post.]

#### *Analysis.*

### I. Offenses and Responsibility Therefor.

§ 1. Nature and elements of offenses.

§ 2. Defenses.



**II. Prosecution and Punishment.**

- § 3. Preliminary proceedings.
- § 4. Indictment or information.
- § 5. — Requisites and sufficiency.
- § 6. — Issues, proof, and variance.
- § 7. Evidence.
- § 8. — Presumptions and burden of proof.
- § 9. — Admissibility in general.
- § 10. — Age of female.
- § 11. — Character of female.
- § 12. — Weight and sufficiency in general.
- § 13. — Corroboration.
- § 14. Trial.
- § 15. — Questions for jury.
- § 16. — Instructions.
- § 17. Sentence and punishment.

**III. Civil Liability.**

- § 18. Acts constituting abduction.
- § 19. Right of action.
- § 20. Defenses.
- § 21. Proceedings in actions.
- § 22. Measure of damages.

*Cross-References.*

See "Kidnapping"; "Seduction."

Detention of woman with intent to rape, see "Rape," § 16.

Enticing away apprentice, see "Apprentices," § 21.

Enticing away child, civil liability, see "Parent and Child," § 18.

Enticing away husband or wife, see "Hus-

band and Wife," §§ 322-337.

Enticing away servant, see "Master and Servant," §§ 339, 348.

Former jeopardy, see "Criminal Law," § 202.

Merger of offense in seduction, see "Criminal Law," § 30.

Venue, see "Criminal Law," § 108.

**I. OFFENSES AND RESPONSIBILITY THEREFOR.**

- § 1. Nature and elements of offenses.
- § 2. Defenses.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**II. PROSECUTION AND PUNISHMENT.****§ 3. Preliminary proceedings.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§§ 4, 5, 6. Indictment or information—  
Requisites and sufficiency;  
Issues, proof and variance.***Cross-Reference.*

Duplicity, see "Indictment and Information," § 125.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 7. Evidence.***Cross-Reference.*

Of other offenses, see "Criminal Law," § 371.

**§ 8.—Presumptions and burden of proof.**

(a) Where, in a trial for enticing from her parents, for the purpose of prostitution, a girl under 18 years of age, it appeared that the girl was brought to the house of defendant by another; that defendant objected to admitting her, owing to her apparent youth, whereupon she represented herself to be over 18 years old; and it appeared that defendant was the keeper of a bawdyhouse,—it is competent for defendant, in order to rebut the presumption, raised by the facts of the youth of the prosecutrix and her presence in the house, that she was enticed there, to show that defendant permitted the girl to remain at her own re-

quest, and for the sole purpose of getting a home for her at that town, and that she afterwards made an effort to get such a home for her, and that while in her house the prosecutrix did not have sexual intercourse with any man.—*Brown v. State*, 72 Md. 468, 20 Atl. 186.

### § 9.—Admissibility in general.

#### *Cross-References.*

Best and secondary evidence, see "Criminal Law," § 400.

Declarations, see "Criminal Law," § 417.

Evidence at preliminary examination or at former trial, see "Criminal Law," § 539.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 10.—Age of female.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 11.—Character of female.

(a) In the trial of one accused of enticing away from her parents a girl under 18 years of age for the purpose of prostitution, evidence of the general bad character of the prosecutrix is admissible.—*Brown v. State*, 72 Md. 477, 20 Atl. 140. [*Cited and annotated in 14 L. R. A. (N. S.) 726, on evidence of specific instances to prove character.*]

(b) It is competent to show that the prosecutrix, at the time of the alleged enticement, was "a girl of the town," and that her character for chastity was bad.—*Brown v. State*, 72 Md. 468, 20 Atl. 186.

(c) Upon the trial on indictment for enticing away from her parents, for the purpose of prostitution, a girl under 18 years of age, it is competent for the accused to show that the prosecutrix had just previously been an habitue of a bawdyhouse, with the knowledge of her parents; but evidence that when a little child she had lived with a prostitute is too remote.—*Brown v. State*, 72 Md. 477, 20 Atl. 140. [*Cited and annotated in 14 L. R. A. (N. S.) 726, on evidence of specific instances to prove character.*]

(d) Evidence that the mother of prosecutrix had made statements that she could not get a place of service for her, owing to her bad character; that, a week after the prose-

cutrix entered the house of defendant, her mother asked that she be sent away, if work were not obtained for her by a certain day; that the prosecutrix was at a party, the night before entering the house of the defendant, where every one was intoxicated; and as to the motive of the prosecutrix for remaining at the house of defendant,—was properly excluded as immaterial.—*Brown v. State*, 72 Md. 468, 20 Atl. 186.

### § 12.—Weight and sufficiency in general.

### § 13.—Corroboration.

### § 14. Trial.

#### *Cross-References.*

Argument of counsel, see "Criminal Law," § 730.

Remarks of judge, see "Criminal Law," § 656.

### § 15.—Questions for jury.

### § 16.—Instructions.

#### *Cross-Reference.*

Definition of terms, see "Criminal Law," § 800.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 17. Sentence and punishment.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## III. CIVIL LIABILITY.

#### *Cross-Reference.*

Enticing away child, see "Parent and Child," § 18.

### § 18. Acts constituting abduction.

(a) The first count of a declaration charged defendant with abducting an infant, and the second with harboring her after abduction. The evidence showed that the infant was the niece of both plaintiff and defendant, and that she had for many years lived with plaintiff, but, after paying a visit to defendant, preferred to remain with the latter, provided she should be permitted to visit the former occasionally. When defendant requested that the infant be allowed to live with her, plaintiff objected, and refused to permit the infant to visit plaintiff if she left plaintiff's home, but plaintiff yielded to the importunity of defendant and the infant, and agreed that the latter might visit plaintiff occasionally.

There was no evidence of force or of fraud. *Held*, that no cause of action was shown under either count.—*Baumgartner v. Eigenbrot*, 100 Md. 508, 60 Atl. 601.

### § 19. Right of action.

#### *Annotation.*

Civil action for abduction of child.—45 L. R. A. (N. S.) 867, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 20. Defenses.

### § 21. Proceedings in actions.

### § 22. Measure of damages.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## ABETTERS.

#### *Cross-References.*

Criminal responsibility, see "Bribery," § 3½; "Criminal Law," §§ 59-82; "Homicide," § 30; "Larceny," § 27.

Indictment, see "Indictment and Information," §§ 82-85.

#### *Annotation.*

1 Words and Phrases, 15.

## ABIDE.

#### *Cross-References.*

Bonds and agreements to abide by award, see "Arbitration and Award," §§ 14, 25.

Bonds and recognizances to abide order or judgment of court, see "Bail"; "Recognizances," § 1.

Bonds and stipulations in admiralty to abide decree, see "Admiralty," §§ 54, 92.

Costs to abide event, see "Costs," §§ 69, 243.

Deposits in court to abide event, see "Deposits in Court," § 1.

Stay of proceedings to abide event of other action pending, see "Action," § 69.

Stipulations to abide event of other action, see "Stipulations," § 3.

#### *Annotation.*

1 Words and Phrases, 16, 17.

## ABODE.

#### *Cross-References.*

See "Domicile."

Of corporation, see "Corporations," § 52.

Service of process at place of abode, see "Process," § 78.

#### *Annotation.*

1 Words and Phrases, 20.

## ABOLITION.

#### *Cross-References.*

Of courts, see "Courts," §§ 42, 43.

Of curtesy, see "Curtesy," § 2.

Of distinction between actions at law and suits in equity, see "Action," § 25.

Of distinction between forms of action, see "Action," § 32.

Of dower, see "Dower," § 3.

Of estates tail, see "Estates Tail," § 2; also, "Deeds," § 127; "Wills," § 607.

Of grade crossings, see "Railroads," § 99.

Of joint tenancies, see "Joint Tenancy," § 2.

Of judicial districts, see "Courts," § 45.

Of office, see "Clerks of Courts," § 2;

"Coroners," § 2; "Counties," § 61;

"Elections," § 49; "Judges," § 2; "Justices of the Peace," § 2; "Municipal

Corporations," § 126; "Officers," § 4;

"States," § 44.

Of rule in *Shelley's Case*, see "Deeds," § 128; "Wills," § 608.

Of school districts, see "Schools and School Districts," § 44.

Of slavery, see "Slaves," § 24.

Of township organizations, see "Schools and School Districts," § 14.

## ABORTION.

#### *Scope-Note.*

[INCLUDES causing or procuring miscarriage or premature delivery of a pregnant woman, and acts done for or in aid of such purpose; nature and extent of criminal responsibility therefor, and grounds of defense; and prosecution and punishment of such acts as public offenses.

[EXCLUDES homicide committed in attempting to procure abortion (see "Homicide"). For complete list of matters excluded, see cross-references, post.]

#### *Analysis.*

- § 1. Nature and elements of offenses.
- § 2. Defenses.
- § 3. Persons liable.
- § 4. Indictment or information.

- § 5. — Requisites and sufficiency.
- § 6. — Issues, proof, and variance.
- § 7. Evidence.
- § 8. — Presumptions and burden of proof.
- § 9. — Admissibility in general.
- § 10. — Dying declarations.
- § 11. — Weight and sufficiency.
- § 12. Trial.
- § 13. — Instructions.
- § 14. — Verdict.
- § 15. Sentence and punishment.
- § 16. Civil liability.

### Cross-References.

Harmless error in prosecution therefor, see "Criminal Law," §§ 1169, 1173.  
 Homicide in commission of, or attempt to commit, see "Homicide," §§ 18, 65, 131, 138, 142, 235, 241.  
 Imputation of crime as slander, see "Libel

and Slander," § 7.  
 Preliminary proceedings, see "Criminal Law," §§ 211, 244.  
 Subject and title of act relating thereto, see "Statutes," § 118.  
 Venue, see "Criminal Law," § 112.

### § 1. Nature and elements of offenses.

(a) Advising a pregnant woman to take a noxious drug to procure an abortion is no offense under act of 1868 (Code, art. 27, §§ 3 *et seq.*), unless the woman actually takes the drug. *Alvey, C. J., dissenting.—Lamb v. State, 67 Md. 524, 10 Atl. 208; Id., 10 Atl. 298. [Cited and annotated in 25 L. R. A. 439, on criminality of solicitation to crime not consummated.]*

### § 2. Defenses.

#### Cross-Reference.

Entrapment, see "Criminal Law," § 37.

### § 3. Persons liable.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### §§ 4, 5, 6. Indictment or information.— Requisites and sufficiency; Issues, proof and variance.

#### Cross-References.

Duplicity, see "Indictment and Information," § 125.  
 Election between counts, see "Indictment and Information," § 132.  
 Following language of statute, see "Indictment and Information," § 110.  
 Preliminary complaint, see "Criminal Law," § 211.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 7. Evidence.

#### Cross-References.

Competency of wife as witness, see "Witnesses," § 61.  
 Privileged communications, see "Witnesses," §§ 210, 211.

### § 8.—Presumptions and burden of proof.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 9.—Admissibility in general.

#### Cross-References.

Acts and declarations of conspirators, and co-defendants, see "Criminal Law," §§ 422, 423.  
 Admissions, see "Criminal Law," §§ 406, 409.  
 Confessions, see "Criminal Law," § 517.  
 Declarations, see "Criminal Law," §§ 415, 417.  
 Documentary evidence, see "Criminal Law," § 434.  
 Hearsay, see "Criminal Law," § 421.  
 Opinion evidence, see "Criminal Law," §§ 448, 449, 469, 473, 479, 486.  
 Res gestæ, see "Criminal Law," § 366.  
 Testimony of accomplices and co-defendants, see "Criminal Law," § 508.

(a) A conversation between defendant and the girl, in which the latter, when charged with not having followed the advice given, stated that she had done so, but without producing the desired effect, is admissible.—*Jones v. State, 70 Md. 326, 17 Atl. 89, 14 Am. St. Rep. 362.*

(b) On indictment under Acts 1868, c. 179, § 2, (Code, art. 27, §§ 3 *et seq.*) for knowingly using, and causing to be used, certain means for causing miscarriage and abortion, letters from defendant to the girl, containing instructions to take ergot, a bottle of which was sent with one of the letters, and minute directions as to how it must be taken, and naming other means to be employed, are admissible in evidence, though it is not shown that defendant was present when the directions were followed.—*Jones v. State*, 70 Md. 326, 17 Atl. 89, 14 Am. St. Rep. 362.

(c) It is competent to show the character of the house where the operation was performed, that it is a house of ill fame, in order that the jury may know whether the place is one where the crime might be committed without apprehending detection.—*Hays v. State*, 40 Md. 633. [*Cited and annotated* in 56 L. R. A. 374, on dying declarations as evidence; in 35 L. R. A. (N. S.) 1085, 1087, on admissibility of declarations of one upon whom abortion committed against others charged with complicity.]

#### § 10.—Dying declarations.

##### *Cross-Reference.*

See ante, § 9.

(a) The theory of the prosecution was that a third person had brought deceased some six miles to defendant to be operated upon, and had then returned home with her, and that shortly thereafter deceased was taken ill. One of the witnesses for defendant, a physician who attended deceased at the house of the traverser, testified that she complained of a burning in her stomach. The traverser then offered to prove by this witness that deceased at the same time stated that on her way to the house something had dropped from her; that she had been taking some stuff, and did not know exactly what was the matter with her. *Held* to be inadmissible as a dying declaration.—*Hays v. State*, 40 Md. 633. [*Cited and annotated* in 56 L. R. A. 374, on dying declarations as evidence; 35 L. R. A. (N. S.) 1085, 1087, on admissibility of declaration of one upon whom abortion committed, against others charged with complicity.]

#### § 11.—Weight and sufficiency.

##### *Cross-Reference.*

Testimony of accomplices and co-defendants, see "Criminal Law," § 507.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### §§ 12, 13, 14. Trial.—Instructions; verdict.

##### *Cross-References.*

Argument of counsel, see "Criminal Law," §§ 720, 722.

Grounds for new trial, see "Criminal Law," § 939.

Harmless error, see "Criminal Law," § 1173.

Principals and accessories, see "Criminal Law," § 792.

Requests in general, see "Criminal Law," § 834.

Testimony of accomplices, see "Criminal Law," § 780.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 15. Sentence and punishment.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 16. Civil liability.

##### *Cross-References.*

Competency of wife as witness, see "Witnesses," § 52.

Statutory action for wrongful death, see "Death," § 14.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### ABRIDGMENT.

##### *Cross-References.*

Abstracts of record on appeal, see "Appeal and Error," §§ 579-592; "Criminal Law," § 1103.

Of evidence in bill of exceptions, see "Criminal Law," § 1091; "Exceptions, Bill of," § 16.

Of evidence in case or statement of facts, see "Appeal and Error," § 560.

##### *Annotation.*

1 Words and Phrases, 30.

### ABROGATION.

##### *Cross-References.*

Of common law of riparian ownership, see "Waters and Water Courses," § 34.

Of treaty, see "Treaties," § 6.

### ABSCONDING.

##### *Cross-References.*

Of debtor, ground for arrest, see "Arrest," § 12.

Of debtor, ground for attachment, see "Attachment," §§ 27-30.

Suspension of running of statute of limitations, see "Limitation of Actions," § 91.

*Annotation.*

1 Words and Phrases, 30.

**ABSENCE.**

*Cross-References.*

See "Absentees."

Compensation of city employe during absence, see "Municipal Corporations," § 220.

Compensation of officers of corporations, during absence, see "Corporations," § 308.

From domicile or place of residence as affecting right to exemptions, see "Exemptions," § 29.

From legal settlement as abandonment thereof, see "Paupers," § 21.

From place of residence as interrupting acquisition of legal settlement, see "Paupers," § 19.

From state as ground for removal of county superintendent of schools, see "Schools and School Districts," § 48.

Of accused as affecting limitation of prosecution, see "Criminal Law," § 152.

Of accused from hearing on motion for new trial, see "Criminal Law," § 960.

Of accused from trial, see "Criminal Law," § 636.

Of accused when sentence is pronounced, see "Criminal Law," § 987.

Of counsel for accused, see "Criminal Law," § 641.

Of counsel, ground for continuance, see "Continuance," § 20; "Criminal Law," § 593.

Of counsel, ground for new trial, see "New Trial," § 86.

Of counsel, ground for opening or vacating judgment, see "Judgment," § 366.

Of counsel when sentence is pronounced, see "Criminal Law," § 988.

Of debtor, ground for arrest, see "Arrest," § 12.

Of debtor, ground for attachment, see "Attachment," §§ 27-30.

Of design to effect death as element of manslaughter, see "Homicide," § 36.

Of fellow servant from post of duty, see "Master and Servant," § 163.

Of husband or wife, ground for divorce, see "Divorce," § 37.

Of intent to do bodily harm as element of manslaughter, see "Homicide," § 37.

Of judge from trial, see "Criminal Law," § 634; "Trial," § 19.

Of juror drawn, see "Jury," § 80.

Of party, affecting limitations of action, see "Limitation of Actions," §§ 84-94.

Of party, excuse for laches in bringing suit, see "Equity," § 78.

Of party, ground for continuance, see "Continuance," § 19; "Criminal Law," § 592.

Of party, ground for judgment by default, see "Judgment," § 109.

Of party, ground for new trial, see "New Trial," § 85.

Of party, ground for opening or vacating judgment, see "Judgment," § 365.

Of party making entries in books offered in evidence, see "Evidence," § 376.

Of party or counsel from trial, see "Trial," § 21.

Of party or counsel ground for opening default, see "Judgment," § 143.

Of party or counsel when instructions are given, see "Trial," § 221.

Of witness ground for admission of evidence given at former trial or in other proceeding, see "Criminal Law," § 543; "Evidence," § 577.

Of witness ground for new trial, see "Criminal Law," §§ 913, 936, 939.

Of witness or evidence ground for continuance, see "Continuance," §§ 22-26; "Criminal Law," §§ 594-598.

Of witness or evidence ground for new trial, see "New Trial," § 88.

Of witness or evidence ground for opening or vacating judgment, see "Judgment," § 369.

Presumption of death, see "Death," § 2.

*Annotation.*

1 Words and Phrases, 32-37.

**ABSENTEES.**

*Scope-Note.*

[INCLUDES persons residing out of the state or who have departed from the state, having no representative therein; their rights and disabilities in general; control and protection of their property; and legal proceedings affecting them.

[EXCLUDES representation of absent parties in actions in general (see "Parties") and proceeding in equity without absent parties (see "Equity"); nonresidence, absence, etc., as ground for arrest, attachment, or other special remedies (see "Arrest"; "Attachment"; and other specific heads); and confiscation of property of absentees as public enemies (see "War"). For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Power to regulate.
- § 2. Who are absentees.
- § 3. Statutory provisions.
- § 4. Jurisdiction of courts.
- § 5. Curators or other representatives.
- § 6. Property and conveyances.
- § 7. Actions.

*Cross-References.*

Absence of witness, ground for admission of evidence at preliminary examination or at former trial, see "Criminal Law," § 543.

Administration of estate of person presumed to be dead, as taking property without due process of law, see "Constitutional Law," § 278.

Appearance in state in rebellion of attorney for nonresident retained prior thereto, see "States," § 17.

Enforcement of vendors' liens against, see "Vendor and Purchaser," § 269.

Foreign corporations, see "Corporations," §§ 631-691.

Grounds for appointment of receiver, see "Receivers," § 14.

Impeachment of testimony of absent witness, see "Witnesses," § 380.

Payment of distributive share of absent distributee, see "Executors and Administrators," § 303.

**§ 1. Power to regulate.***Cross-Reference.*

See post, § 3.

*Annotation.*

Constitutionality of statutes providing for administration of estates of absent persons.—4 L. R. A. (N. S.) 944, note.

(a) It is within the power of the state to confer jurisdiction on orphans' courts to administer on the estates of absentees, though they be alive, by special proceedings, distinct from the general power to administer on decedents' estates, in subordination to the fourteenth amendment of the federal Constitution.—Savings Bank of Baltimore v. Weeks, 110 Md. 78, 72 Atl. 475.

**§ 2. Who are absentees.***Annotation.*

1 Words and Phrases, 37.

(a) A nonresident within Code, art. 16, sec. 130, providing that where it is unknown whether a nonresident is living a bill may be filed against him, as if living, etc., is one who does not reside in the state as defined in the law relating to attachment.—Hollander v. Central Metal & Supply Co. of City of Baltimore, 109 Md. 131, 71 Atl. 442.

(b) If petitioner has been out of the state for a year and a half with no intention of returning or with the intention of return-

ing at some indefinite future time, he is a nonresident within Code, art. 16, § 130, providing that where it is unknown whether a nonresident is living or dead, a bill may be filed against him as if living, etc., and he may be proceeded against as such though he may not intend to abandon his domicile in the state.—Hollander v. Central Metal & Supply Co. of City of Baltimore, 109 Md. 131, 71 Atl. 442. [Cited and annotated in 29 L. R. A. (N. S.) 625, 629, as to whether jurisdiction of suit to quiet title or remove cloud on title to land within territorial jurisdiction may rest upon constructive service of nonresident.]

**§ 3. Statutory provisions.***Cross-References.*

See table of cross-references at head of title.

*Annotation.*

Conveyance by married person free from dower claims of absent spouse, see Code, art. 45, § 13.

Administration on estates of absent persons, see Code, art. 93, §235.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 4. Jurisdiction of courts.***Cross-Reference.*

Jurisdiction over estate, see ante sec. 3, and post, § 6.

(a) A petition for the appointment of an administrator of an absentee, which alleges

that the absentee left the county more than seven years before the time of presenting the petition, since which time the petitioners, the sisters and sole heirs of the absentee, have acquired no information whether he is dead or alive, is insufficient, under Acts 1896, c. 246 (see Code, art. 93, § 235), authorizing the appointment of administrators of persons who by their uninterrupted absence for more than seven years are supposed to be dead, on a petition setting forth the time and place when and where the absentee was last heard of by his family, that diligent inquiry has been made among the family, and that advertisement and inquiry by letters or otherwise have been made at the most likely place of his last residence, and that no information has been obtained, and that the applicant really believes the absentee to be dead.—*Lee v. Allen*, 100 Md. 7, 59 Atl. 184.

#### § 5. Curators or other representatives.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 6. Property and conveyances.

##### *Cross-Reference.*

See ante, sec. 3.

(a) Acts 1896, p. 434, c. 246 (see Code, art. 93, § 235), authorizes the appointment of an administrator of an absentee's estate, and provides that the notice of the petition therefor shall be published not less than once a week for four successive weeks 15 days before the time fixed for the appearance of the absentee. In proceedings for the appointment of an administrator of an absentee, it did not appear that any notice was given, while it affirmatively appeared that the letters were granted 17 days after the petition therefor. *Held*, that as the notice was not given as required by the statute, the letters were void.—*Lee v. Allen*, 100 Md. 7, 59 Atl. 184.

(b) Code, art. 5, § 60, providing for appeals from decrees of the orphans' court by a party deeming himself ag-

grieved thereby, authorizes a trustee holding funds belonging to an absentee to appeal from a decree of the orphans' court appointing an administrator of the absentee, especially when the appointment was made for the purpose of vesting in the administrator the title to the property in the trustee's hands.—*Lee v. Allen*.—100 Md. 7, 59 Atl. 184.

#### § 7. Actions.

(a) A petition for the appointment of an administrator of an absentee, which alleges that the absentee left the county more than seven years before the time of presenting the petition, since which time the petitioners, the sisters and sole heirs of the absentee, have acquired no information whether he is dead or alive, is insufficient, under Acts 1896, p. 434, c. 246 (see Code, art. 93, § 235), authorizing the appointment of administrators of persons who by their uninterrupted absence for more than seven years are supposed to be dead, on a petition setting forth the time and place when and where the absentee was last heard of by his family, that diligent inquiry has been made among the family, and that advertisement and inquiry by letters or otherwise have been made at the most likely place of his last residence, and that no information has been obtained, and that the applicant really believes the absentee to be dead.—*Lee v. Allen*, 100 Md. 7, 59 Atl. 184.

#### ABSTRACT QUESTIONS.

##### *Cross-Reference.*

Appellate jurisdiction to decide, see "Appeal and Error," §§ 19, 781; "Criminal Law," § 1017.

#### ABSTRACTS.

##### *Cross-References.*

Of judgment, necessity and sufficiency to create lien, see "Judgment," § 768.

Of record on appeal, see "Appeal and Error," §§ 579-592; "Criminal Law," § 1103.

Of title, see "Abstracts of Title."

##### *Annotation.*

1 Words and Phrases, 46.



# ABSTRACTS OF TITLE.

## *Scope-Note.*

[INCLUDES the brief statements of the history of the title to real property, and summaries of the conveyances or other instruments, and facts affecting the title to such property or subjecting is to incumbrances, liens, or other liabilities, which are usually prepared to show the titles of vendors, mortgagors, etc.; nature, requisites, and incidents of such abstracts; and liabilities of those preparing or furnishing them.

[EXCLUDES rights and liabilities, in respect of such abstracts, of parties to sales (see "*Vendor and Purchaser*") or mortgages (see "*Mortgages*"); and insurance of titles (see "*Insurance*"). For complete list of matters excluded, see cross-references, post.]

## *Analysis.*

- § 1. Requisites, making, and sufficiency.
- § 2. Abstract companies.
- § 3. Rights, duties, and liabilities of examiners of titles.

## *Cross-References.*

Admissibility, as evidence, see "*Evidence*," § 343.  
As exhibits in action to restrain trespass, see "*Injunction*," § 118.  
Assignment of contract by abstracter to turn over orders for abstracts, see "*Assignments*," § 19.  
Delivery or filing in action of ejectment, see "*Ejectment*," § 78.  
Delivery or filing in trespass to try title, see "*Trespass to Try Title*," § 36.  
Liability of attorney for negligence in examining title, see "*Attorney and Client*," § 109.  
Liability of attorney for slander of title, see "*Libel and Slander*," § 132.  
Liability of examiner as affected by statutes of limitation, see "*Limitation of Actions*," §§ 28, 55.

Liability of examiner to undisclosed principal, see "*Principal and Agent*," § 143.  
Liability of register of deeds for negligence in preparing abstract, see "*Register of Deeds*," § 6.  
Libelous publication concerning abstracter of titles, see "*Libel and Slander*," § 9.  
Record as notice of conveyance not appearing in abstract, see "*Vendor and Purchaser*," § 231.  
Rights and liabilities of vendor and purchaser, see "*Vendor and Purchaser*," § 146.  
Sale of good will of business of abstracter of titles, see "*Good Will*," § 6.  
Subject and title of act relating to records and abstracts, see "*Statutes*," § 120.  
Taxation of abstract books, see "*Taxation*," § 67.

## § 1. Requisites, making, and sufficiency.

### *Cross-Reference.*

Sufficiency of abstract to relieve abstracter of liability, see post, § 3.

### *Annotation.*

1 Words and Phrases, 47, 48.

Duty of vendor as to abstract of title.—43 L. R. A. (N. S.) 44, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 2. Abstract companies.

### *Cross-Reference.*

See post, § 3.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 3. Rights, duties and liabilities of examiners of titles.

### *Cross-References.*

Liability of register of deeds for negligence in preparing abstract, see "*Registers of Deeds*," § 6.

Liability to undisclosed principal, see "*Principal and Agent*," § 143.

Limitations, see "*Limitation of Actions*," §§ 28, 55.

### *Annotation.*

Liability of attorney to client for mistake in examination of titles.—52 L. R. A. 889, note.

Liability of officer for defects in abstract.—22 L. R. A. 99, note.

Liability of title abstracter.—12 L. R. A.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

(N. S.) 449; 26 L. R. A. (N. S.) 1207;  
42 L. R. A. (N. S.) 176, notes.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### ABUSE OF PROCESS.

#### Cross-References.

See "False Imprisonment"; "Malicious Prosecution"; "Process," §§ 168-171.  
Of mandate or other proceeding, as contempt of court, see "Contempt," § 11.

#### Annotation.

1 Words and Phrases, 50.

### ABUSIVE LANGUAGE.

#### Cross-References.

See "Torts," § 7.  
As criminal offense, see "Disorderly Conduct."  
As provocation for homicide, see "Homicide," §§ 45, 49.  
By counsel in argument to jury, see "Criminal Law," § 724; "Trial," § 126.  
Justification for pointing or exhibiting weapon, see "Weapons," § 14.

### ABUTTING OWNERS.

#### Cross-References.

Assessment for public improvements, see "Municipal Corporations," §§ 405-524.  
Compensation for taking of or injury to lands or easements for public use, see "Eminent Domain," § 69.  
Consent to construction of street railroad, see "Street Railroads," § 26.  
Liability for injuries from defects or obstructions in highways, see "Highways," § 199.  
Liability for injuries from defects or obstructions in streets, see "Municipal Corporations," § 808.  
Rights and liabilities as to property dedicated to public use in general, see "Dedication," § 61.  
Rights in highways as against turnpike or toll road companies, see "Turnpikes and Toll Roads," § 16.  
Rights in highways in general, see "Highways," §§ 80-89.  
Rights in streets, see "Municipal Corporations," § 663.  
Rights in streets as against street railroad companies, see "Street Railroads," § 34.  
Rights in streets or highways as against electric companies, see "Electricity," § 6.  
Rights to damages for injuries from public improvements, see "Municipal Corporations," §§ 377-404.

#### Annotation.

1 Words and Phrases, 50, 51.

### ACADEMIES.

#### Cross-Reference.

See "Schools and School Districts," §§ 1-8.

#### Annotation.

1 Words and Phrases, 51, 52.

### ACCELERATION.

#### Cross-Reference.

Of remainder by failure of devise of particular estate, see "Wills," § 853.

### ACCEPTANCE.

#### Cross-References.

By inhabitants of municipality of special charter, see "Municipal Corporations," § 8.  
By landlord of surrender of lease, see "Landlord and Tenant," § 109.  
By railroad company of amendment of charter, see "Railroads," § 19.  
Of abandonment of lease, see "Landlord and Tenant," § 110.  
Of advancement, see "Descent and Distribution," § 100.  
Of amount paid into court incident to tender, see "Tender," § 27.  
Of application for insurance, see "Insurance," §§ 130, 713.  
Of appointment as executor, see "Executors and Administrators," §§ 16, 25.  
Of appointment as guardian ad litem, see "Infants," § 81.  
Of appointment as school teacher, see "Schools and School Districts," § 135.  
Of assignment by assignee, see "Assignments," § 56.  
Of assignment for benefit of creditors, by creditors, see "Assignments for Benefit of Creditors," § 44.  
Of assignment of insurance policy, see "Insurance," § 211.  
Of assignment of lease, see "Landlord and Tenant," § 78.  
Of benefits, ground of estoppel in pais, see "Estoppel," § 92.  
Of benefits, ground of estoppel to appeal, see "Appeal and Error," §§ 161-164.  
Of benefits, ground of ratification of acts of agent, see "Principal and Agent," § 171.  
Of benefits under will as constituting election, see "Wills," § 794.  
Of bid at judicial sales in general, see "Judicial Sales," § 20.  
Of bid for contract with county, see "Counties," § 120.  
Of bid for contract with municipal corporation, see "Municipal Corporations," §§ 240, 241, 335, 336.  
Of bill of exchange, see "Bills and Notes," §§ 66-89.  
Of bond, see "Bonds," § 24.  
Of charitable trust by trustee or donee, see "Charities," § 24.  
Of charter by incorporators, see "Corporations," § 10.  
Of check, see "Banks and Banking," § 140.  
Of composition by creditors of bankrupt, see "Bankruptcy," § 377.  
Of conditions in railroad ticket, see "Carriers," § 254.  
Of conditions of grant of public aid to railroad, see "Railroads," § 35.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

Of contract of employment, see "Master and Servant," § 3.  
 Of dedication, see "Dedication," §§ 31-37.  
 Of deed, see "Deeds," §§ 64, 65, 194.  
 Of deed containing covenants on part of grantee, see "Covenants," § 7.  
 Of deed in compliance with contract of sale, see "Vendor and Purchaser," § 155.  
 Of delivery of contract, see "Contracts," § 43.  
 Of delivery of written instrument creating obligation of suretyship, see "Principal and Surety," § 28.  
 Of devise or legacy, see "Wills," § 717.  
 Of estate or succession, see "Descent and Distribution," § 119.  
 Of gift, see "Gifts," §§ 24, 63.  
 Of goods delivered to carrier for transportation, see "Carriers," §§ 39-45.  
 Of goods sold, see "Sales," §§ 170, 177, 178, 180, 181.  
 Of goods sold, within statute of frauds, see "Frauds, Statute of," §§ 87-91.  
 Of grant or franchise to telegraph or telephone company, see "Telegraphs and Telephones," §§ 7, 10.  
 Of grant to railroad company of right in street, see "Railroads," § 75.  
 Of highway established by Legislature, see "Highways," § 21.  
 Of highway established by statutory proceedings, see "Highways," § 101.  
 Of insurance policy, see "Insurance," §§ 136, 720.  
 Of lease, see "Landlord and Tenant," § 25.  
 Of lease by assignee for benefit of creditors, see "Assignments for Benefit of Creditors," § 235.  
 Of lease by receiver, see "Receivers," § 91.  
 Of lease by trustee in bankruptcy, see "Bankruptcy," § 255.  
 Of legacy as affecting right to interest thereon, see "Wills," § 734.  
 Of message by telegraph or telephone company, see "Telegraphs and Telephones," § 35.  
 Of mortgage, see "Chattel Mortgages," § 67; "Mortgages," § 73.  
 Of municipal charter, see "Municipal Corporations," § 8.  
 Of new agreement as satisfaction, see "Accord and Satisfaction," § 19.  
 Of nomination for office, see "Elections," § 146.  
 Of offer of compromise, see "Compromise and Settlement," § 5.  
 Of offer of judgment, see "Judgment," § 81.  
 Of offer of reward, see "Rewards," § 7.  
 Of offer or proposal in general, see "Contracts," §§ 16, 22-24; "Guaranty," §§ 6, 7; "Sales," §§ 22, 23; "Vendor and Purchaser," §§ 16, 17.  
 Of offer or proposal as within statute of frauds, see "Frauds, Statute of," § 71.  
 Of offer to arbitrate, see "Arbitration and Award," §§ 10, 22.  
 Of offer to marry, see "Breach of Marriage Promise," § 4.

Of office, see "Schools and School Districts," § 63.  
 Of order as within statute of frauds, see "Frauds, Statute of," § 27.  
 Of ordinance regulating operation of street railroad, see "Street Railroads," § 77.  
 Of part payment, as satisfaction, see "Accord and Satisfaction," §§ 7-12.  
 Of patent to public lands, see "Public Lands," § 112.  
 Of payment, see "Payment," § 34.  
 Of payment to justice of the peace, see "Justices of the Peace," § 88.  
 Of performance of contract, see "Contracts," §§ 284-292, 304.  
 Of performance of contract for public improvements, see "Municipal Corporations," § 365.  
 Of pleadings, see "Pleadings," § 338.  
 Of property by bailee, see "Bailment," § 5.  
 Of rent as waiver of forfeiture of lease, see "Landlord and Tenant," § 112.  
 Of report of commissioners in highway proceedings, see "Highways," § 41.  
 Of resignation of school teacher, see "Schools and School Districts," § 139.  
 Of service of process, see "Process," § 67.  
 Of service of process against foreign corporation, see "Corporations," § 668.  
 Of services, as implying contract to pay for same, see "Work and Labor," § 4.  
 Of statute relating to police and fire departments in towns, see "Towns," § 16.  
 Of stipulations limiting liability of telegraph and telephone company, see "Telegraphs and Telephones," § 54.  
 Of street railroad, see "Street Railroads," § 46½.  
 Of street railroad franchise, see "Street Railroads," § 24.  
 Of subscription, see "Subscriptions," § 4.  
 Of substituted debtor, see "Novation," § 7.  
 Of surrender of insurance policy, see "Insurance," § 240.  
 Of surrender of lease, see "Landlord and Tenant," § 194.  
 Of tender, see "Tender," § 20.  
 Of trust by assignee or trustee for benefit of creditors, see "Assignments for Benefits of Creditors," § 43.  
 Of trust by cestui que trust, see "Trusts," § 39.  
 Of trust by trustee, see "Trusts," § 38.  
 Of United States survey, see "Public Lands," § 25.  
 Of work done under contract for maintenance and repair of highways, see "Highways," § 113.  
 Of work under contract by architects or others, see "Contracts," § 286.

#### Annotation.

1 Words and Phrases, 53-57.

#### ACCESS.

#### Cross-References.

Of husband, as creating presumption of legitimacy of children, see "Bastards," § 3.

To child by parent deprived of custody on divorce, see "Divorce," § 299.  
 To corporate books and records, see "Corporations," § 181.  
 To highway by abutting owner, see "Highways," § 85.  
 To navigable waters, prevention as element of compensation under law of eminent domain, see "Eminent Domain," § 99.

To navigable waters, rights of riparian owners, see "Navigable Waters," § 39.  
 To property, prevention as element of compensation under law of eminent domain, see "Eminent Domain," § 106.  
 To public records or files, see "Records," § 14.

*Annotation.*

1 Words and Phrases, 58.

## ACCESSION.

*Scope-Note.*

[INCLUDES additions or increments to property, real or personal, or augmentation of its value otherwise than by intermingling goods of the same kind.

[EXCLUDES additions to the soil by accretion or reliction (see "*Waters and Water Courses*"); improvements placed on real property (see "*Improvements*"); and intermixture of goods of the same kind belonging to different owners (see "*Confusion of Goods*"). For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Nature and effect in general.
- § 2. Rights and remedies of owners and others interest

*Cross-References.*

Addition to the soil by accretion or reliction, see "Navigable Waters," § 44;  
 "Waters and Water Courses," § 93.

Annexation of personal to real property, see "Fixtures," "Improvements."  
 Intermixture of goods of same kind, see "Confusion of Goods."

### § 1. Nature and effect in general.

*Cross-Reference.*

See post, § 2.

*Annotation.*

Title by accession to crops, fruit, and timber wrongfully severed.—32 L. R. A. 422, note.

(a) The issue of a mortgaged slave born after the title of the mortgagee has become absolute at law, and during the possession of the mortgagor, is liable for the mortgage debt.—*Evans v. Merriken*, 8 G. & J. 39. [Cited and annotated in 17 L. R. A. 82, on title to increase of animals.]

### § 2. Rights and remedies of owners and others interested.

*Annotation.*

Does chattel mortgage on domestic animals cover their increase when not mentioned therein.—14 L. R. A. (N. S.) 431, note.

Rights and remedies of owner of standing timber which has been manufactured into lumber after expiration of

time stipulated for removal.—29 L. R. A. (N. S.) 552, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## ACCESSORIES.

*Cross-References.*

Allegations in indictment or information, see "Indictment and Information," §§ 84, 85.

Criminal responsibility, see "Criminal Law," §§ 59-82; "Homicide," §§ 30, 83, 249, 281, 305; "Incest," § 8½; "Larceny," § 27.

Testimony of accomplices and co-defendants, see "Criminal Law," § 507.

To sale of mortgaged property, see "Chattel Mortgages," § 230.

Variance between allegations and proof, see "Indictment and Information," § 174.

*Annotation.*

1 Words and Phrases, 59 *et seq.*

## ACCIDENT.

*Cross-References.*

Cause of collision, see "Collision."

Cause of death, see "Death," §§ 12-18.

Cause of loss of or injury to goods, see "Carriers," §§ 107-137; "Shipping," §§ 119-133.

Cause of loss within insurance policy, see "Insurance," §§ 449-467, 787, 788.

Cause of personal injuries, see "Bridges," §§ 34-46; "Carriers," §§ 280-349; "Electricity," §§ 12-19; "Explosives," §§ 6-12; "Gas," §§ 14½-20; "Highways," §§ 165-186; "Innkeepers," § 10; "Landlord and Tenant," §§ 162-170; "Master and Servant," § 97; "Municipal Corporations," §§ 716-722, 744; "Negligence," "Railroads," §§ 274-404; "Shipping," §§ 78-87, 166; "Street Railroads," §§ 78-122.

Defense to civil action for assault, see "Assault and Battery," § 16.

Defense to criminal prosecution, see "Assault and Battery," § 70; "Homicide," §§ 125, 248, 304.

Ground for attacking release or satisfaction of mortgage, see "Mortgages," § 316.

Ground for equitable relief against judgment, see "Judgment," § 435.

Ground for jurisdiction and relief in equity, see "Equity," § 4.

Ground for new trial, see "Criminal Law," § 936; "New Trial," §§ 82-98.

Ground for setting aside sale under power in trust deed, see "Mortgages," § 369.

Inevitable accident, see "Carriers," §§ 119, 285; "Collision," § 22; "Master and Servant," § 97; "Negligence," § 63.

Intermixture of goods by accident, see "Confusion of Goods," § 5.

Investigation of causes of railroad accidents, see "Railroads," § 9.

#### *Annotation.*

1 Words and Phrases, 62-72.

### **ACCIDENT INSURANCE.**

#### *Cross-Reference.*

See Insurance, §§ 291-301, 449-467, 525-530, 789.

#### *Annotation.*

1 Words and Phrases, 72.

### **ACCOMMODATION PAPER.**

#### *Cross-References.*

See "Bills and Notes," §§ 49, 75, 96, 122, 237, 238, 371; "Corporations," §§ 414, 467.

#### *Annotation.*

1 Words and Phrases, 73-74.

### **ACCOMMODATIONS.**

#### *Cross-References.*

At railroad stations, see "Railroads," § 217.

For passengers, see "Carriers," § 266; "Street Railroads," § 70.

In theatres and places of public amusement, see "Theatres and Shows," § 4.

Train service and accommodations, see "Railroads," § 218.

### **ACCOMMODATION SURETY.**

#### *Cross-References.*

Right of surety for compensation, to contribution from accommodation surety, see "Principal and Surety," § 194.

### **ACCOMPLICES.**

#### *Cross-References.*

Co-conspirators, see "Conspiracy," § 41.

Criminal responsibility, see "Arson," § 15; "Criminal Law," §§ 59-82; "Homicide," § 30; "Intoxicating Liquors," § 167.

Cross-examination, see "Witnesses," § 278.

Evidence as to efforts to prevent prosecution of accomplice, see "Criminal Law," § 353.

Interest of accomplice in criminal prosecution as ground of impeachment, see "Witnesses," § 366.

Pendency of trial of, as ground for continuance of prosecution against codefendant, see "Criminal Law," § 589.

Testimony, see "Criminal Law," §§ 507-512.

#### *Annotation.*

1 Words and Phrases, 75-79.

## **ACCORD AND SATISFACTION.**

### *Scope-Note.*

[INCLUDES agreements for discharge of contracts or satisfaction for injuries by payment, performance, or delivery and acceptance of something different from what might legally be claimed; nature, requisites, validity, operation, and effect of such agreements and of performance thereof; and pleading accord and satisfaction and proof thereof as a defense.

[EXCLUDES compromises by mutual concessions and agreements for settlement of balances (see "*Compromise and Settlement*"); and relinquishment of rights or claims (see "*Release*"). For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Nature and requisites in general.
- § 2. Subject-matter.
- § 3. Persons between whom made.
- § 4. Form of agreement of accord.
- § 5. Consideration of accord in general.
- § 6. Part payment.
- § 7. — In general.
- § 8. — Consideration in general.
- § 9. — By bills, notes, or checks.
- § 10. — Disputed or unliquidated claims.
- § 11. — Conditioned on acceptance as payment in full.
- § 12. — Effect of receipt in full.
- § 13. Conveyance or surrender of property, rights, or claims.
- § 14. Giving additional or different security.
- § 15. Execution of accord as satisfaction.
- § 16. — Necessity in general.
- § 17. — Effect of accord without satisfaction.
- § 18. — Sufficiency in general.
- § 19. — Acceptance of new agreement.
- § 20. Validity.
- § 21. Rescission by parties.
- § 22. Impeaching or setting aside.
- § 23. Operation and effect of satisfaction.
- § 24. Rights and liabilities of parties as to third persons.
- § 25. Pleading.
- § 26. Evidence.
- § 27. Questions for jury.

*Cross-References.*

See "Compositions with Creditors"; "Compromise and Settlement"; "Novation"; "Payment"; "Release"; "Tender." As defense in trespass, see "Trespass," § 25.

Parol evidence to vary statement amounting to accord and satisfaction, see "Evidence," § 397.

Payment of market value of timber as bar to action for statutory penalty for trespass, see "Trespass," § 63.

**§ 1. Nature and requisites in general.***Cross-Reference.*

Mistake as to amount, see post, § 7.

(a) Accord and satisfaction is different from strict performance or payment; it is the doing of that by the covenantor which the covenantee accepts instead of a performance of the terms of the covenant.—*Franklin Fire Ins. Co. v. Hamill*, 5 Md. 170. [Cited and annotated in 26 L. R. A. 855, on insurer's option to rebuild; in 20 L. R. A. (N. S.) 962, on effect of insurer's election to repair or replace insured property.]

**§ 2. Subject-matter.***Cross-References.*

Form of agreement, see post, § 4.

Part payment by third person, see post, § 7.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 3. Persons between whom made.***Cross-References.*

Authority of agent, see "Principal and Agent," § 155.

Ratification of agent's acts, see "Principal and Agent," § 166.

Release of one of joint debtors as release of all, see "Release," § 28.

Part payment by third person, see post, § 7.

Plea of account, see post, § 25.

Release of one of joint wrongdoers, see "Release," § 29.

*Annotation.*

Effect of payment of debt by stranger or volunteer.—23 L. R. A. 120, note.

(a) A judgment creditor is not bound to accept, in satisfaction of the judgment, a sum less than the amount thereof, though the same was paid to and accepted by the judgment creditor's attorney in full satisfaction.—*Rohr v. Anderson*, 51 Md. 205. [Cited and annotated in 31 L. R. A. (N. S.) 524, on implied power of attorney to compromise cause of action.]

**§ 4. Form of agreement of accord.**

(a) After breach of an obligation under seal, any agreement between the parties that would operate as an accord and satisfaction of the original agreement may be pleaded in discharge.—*Herzog v. Sawyer*, 61 Md. 344.

(b) In scire facias on a judgment, a plea which avers an agreement to compromise a pending suit in discharge of the judgment, and performance of the conditions on the part of the judgment debtor, including the payment of all money agreed on, is a sufficient plea of accord and satisfaction.—*McCullough v. Franklin Coal Co.*, 21 Md. 256.

(c) Under the rule that to dissolve a covenant an instrument of equal solemnity is necessary accord and satisfaction is a good bar to an action of covenant only where the breach of covenant has accrued, but not where the breach has not accrued.—*Harper v. Hampton*, 1 H. & J. 622.

**§ 5. Consideration of accord in general.**

*Cross-References.*

To support agreement to accept part payment, see post, §§ 8-11.

To support compromise, see "Compromise and Settlement," § 6.

To support release, see "Release," §§ 12-14.

(a) Anything which would be a burden to one party or a possible benefit to the other, as the compromise of a disputed claim, may be a sufficient consideration for an accord and satisfaction.—*Scheffenacker v. Hoopes*, 113 Md. 111, 77 Atl. 130.

**§ 6. Part payment.**

*Cross-References.*

See 1 Cent. Dig. Accord. §§ 46-97; 30 Cent. Dig. Judgm. § 1666.

Questions for jury, see post, § 27.

As consideration for release, see "Release," § 13.

**§ 7.—In general.**

*Cross-References.*

Claims against insolvent, see post, § 8.

Part payment by note or check of third person, see post, § 9.

*Annotation.*

Part payment as accord and satisfaction.—20 L. R. A. 785, note; 42 L. R. A. (N. S.) 112, note.

(a) The payment of a smaller sum than is unquestionably due, with no other element of accord in the transaction, is not a satisfaction of the debt, even though accepted as such at the time.—*Commercial & Farmers Nat. Bank v. McCormick*, 97 Md. 703, 55 Atl. 439. [Cited and annotated in 11 L. R. A. (N. S.) 1018, on part payment as consideration for discharge of undisputed debt.]

(b) An agreement by a creditor to accept in full satisfaction of the debt, including the accrued interest, the principal sum due on an undisputed written obligation to pay money, is without consideration, and void.—*Emmitsburgh R. Co. v. Donoghue*, 67 Md. 383, 10 Atl. 233. [Cited and annotated in 20 L. R. A. 790, on accord and satisfaction by part payment; in 25 L. R. A. (N. S.) 289, on void, invalid, or unfounded claim as subject of valid compromise; in 40 L. R. A. (N. S.) 590, on acceptance of principal as affecting right to interest.]

(c) As a judgment creditor is not bound to accept a sum of money less than the amount of the judgment, paid to his attorney in full satisfaction of the judgment, the creditor, on refusing such payment made to his attorney, may recover the full amount of the judgment.—*Rohr v. Anderson*, 51 Md. 205. [Cited and annotated in 31 L. R. A. (N. S.) 524, on implied power of attorney to compromise cause of action.]

(d) As a judgment creditor is not bound to accept a sum of money paid by the judgment debtor to the creditor's attorney, who without authority received it in satisfaction

of the judgment, it is error to charge in an action on the judgment, after the judgment creditor refused to accept the sum paid, that plaintiff was not entitled to recover; it should be left to the jury to say whether the money was paid in full satisfaction, or only as a part payment.—*Rohr v. Anderson*, 51 Md. 205. [*Cited and annotated in 31 L. R. A. (N. S.) 524, on implied power of attorney to compromise cause of action.*]

(e) Where there is nothing more than a simple payment, and acceptance of a less sum of money, in satisfaction of a greater sum due, this will not be sufficient to sustain a plea of accord and satisfaction.—*Hardey v. Coe*, 5 Gill 189; *Booth v. Campbell*, 15 Md. 569. [*Cited and annotated in 20 L. R. A. 786, 788, on accord and satisfaction by part payment.*]

(f) Payment of a part of the amount due on a money judgment, under an agreement that it shall operate as a satisfaction in full, will not discharge the judgment.—*Campbell v. Booth*, 8 Md. 107. [*Cited and annotated in 20 L. R. A. 786, 788, on accord and satisfaction by part payment.*]

(g) Where a judgment creditor executed a receipt for a certain sum in full of all judgments, on which more was then due than the amount paid, the fact that the debtor traveled a considerable distance in order to make the payment does not amount to such additional consideration as will render the receipt binding as a receipt in full.—*Jones v. Ricketts*, 7 Md. 108.

## § 8.—Consideration in general.

### *Cross-References.*

Disputed or unliquidated claims, see post, § 10.

Effect of receipt in full, see post, § 12.

Effect of payment of dividend to creditors of insolvent, see "Assignments for Benefit of Creditors," § 322.

Sufficiency of plea, see post, § 25.

### *Annotation.*

See annotation under § 7, ante.

(a) In the case of a liquidated claim, the acceptance of part of the amount in satisfaction of the whole will bar a recovery of the remainder if the settlement is supported by some consideration additional or collateral to the partial payment.—*Scheffenacker v. Hoopes*, 113 Md. 111, 77 Atl. 130.

(b) An offer of a company to settle in full with its agents by paying them at once 50 per cent. of all commissions accrued or to accrue on account of sales theretofore made, and an acceptance thereof in full, is a good accord and satisfaction, since anticipation of time of payment is a sufficient consideration.—*Singer Sewing Mach. Co. v. Lee*, 105 Md. 663, 66 Atl. 628.

(c) An agreement to accept, and payment of a part of a debt, constitute an accord and satisfaction only where the agreement is not a nude pact, but rests on a new and adequate consideration.—*Rohr v. Anderson*, 51 Md. 205. [*Cited and annotated in 31 L. R. A. (N. S.) 524, on implied power of attorney to compromise cause of action.*]

(d) Where, in addition to part payment, there is a collateral consideration, sufficient in law to support a contract, an agreement to release the residue is valid as an accord and satisfaction.—*Booth v. Campbell*, 15 Md. 569. [*Cited and annotated in 20 L. R. A. 786, 788, on accord and satisfaction by part payment.*]

(e) Procuring a written agreement from one probably liable on the default of the defendant, that he will take no advantage of the discharge of the defendant, is a good consideration to make a part payment a satisfaction.—*Booth v. Campbell*, 15 Md. 569. [*Cited and annotated in 20 L. R. A. 786, 788, on accord and satisfaction by part payment.*]

(f) Where there is an agreement, upon an adequate consideration, to pay a sum certain, it cannot be avoided by an agreement to receive a less sum.—*Geiser v. Kershner*, 4 G. & J. 305, 23 Am. Dec. 566.

## § 9.—By bills, notes, or checks.

### *Cross-Reference.*

Acceptance of condition that part payment be in full, see post, § 11.

(a) An order for a sum less than the debt, drawn upon a third person, who refuses to accept it, does not amount to a satisfaction of the debt, without a release.—*Geiser v. Kershner*, 4 G. & J. 305, 23 Am. Dec. 566.

## § 10.—Disputed or unliquidated claims.

### *Cross-References.*

Acceptance of condition that part payment be in full, see post, § 11.



Questions for jury, see post, § 27.

Dispute as consideration for compromise, see "Compromise and Settlement," § 6.

Dispute as consideration for release, see "Release," § 13.

Evidence of agreement of accord, see post, § 26.

Record of agreement with county board, see ante, § 4.

#### *Annotation.*

See annotations under § 7, ante.

(a) On the death of an insured, his administratrix filed proofs of death showing that insured was only 18 years of age when the insurance was taken, though the application stated that he was over 20. If he was only 18, defendant was liable only for \$400.29, while, if his age was correctly stated, it was liable for \$1,000. The company declined to pay without further proofs concerning deceased's age, but without such proofs compromised with the administratrix for \$389.99 on receiving a receipt "in full" for all claims under the policy. *Held*, that the dispute did not constitute an adequate consideration for the receipt, so as to support the same as an accord and satisfaction, barring a subsequent action for the balance, on it being ascertained that insured's age was correctly stated in the policy.—*Prudential Ins. Co. v. Cottingham*, 103 Md. 319, 63 Atl. 359. [*Cited and annotated in 11 L. R. A. (N. S.) 1022*, on part payment as consideration for discharge of undisputed debt.]

#### § 11.—Conditioned on acceptance, as payment in full.

##### *Cross-References.*

Questions for jury, see post, § 27.

Acceptance of conditional tender, see "Tender," § 20.

Acceptance of offer of compromise, see "Compromise and Settlement," § 5.

Effect of protest accompanying receipt in full, see post, § 12.

#### *Annotation.*

Acceptance of part of claim accompanied by statement that it is "in full," or by words of similar import.—14 L. R. A. (N. S.) 443, note; 27 L. R. A. (N. S.) 439, note.

(a) Where defendant sent plaintiff a check for less than the amount claimed in satisfaction, directing him not to use the check unless he accepted it in full settlement, and plaintiff, while refusing to accept it in set-

tlement, had it certified and retained it in his possession, such certification constituted "use" of the check, and therefore an acceptance, amounting to an accord and satisfaction.—*Scheffenacker v. Hoopes*, 113 Md. 111, 77 Atl. 130.

#### § 12.—Effect of receipt in full.

##### *Cross-References.*

See, also, ante, § 7.

Receipt as evidence of payment, see "Payment," §§ 35, 54, 74.

Receipt of release, see "Release," § 8.

Statutory regulations, see ante, § 7.

Protest accompanying acceptance of part payment on condition that it be in full, see ante, § 11.

(a) The payment of a smaller sum can never be pleaded in satisfaction or discharge of a greater one, unless some agreement, founded on a sufficient consideration, be shown for giving up the residue, or unless there be a release under seal.—*Rohr v. Anderson*, 51 Md. 205.

(aa) A judgment creditor, on refusing to accept a sum of money less than the amount due on the judgment, paid to his attorney in full satisfaction, may recover the full amount of the judgment.—*Rohr v. Anderson*, 51 Md. 205.

(b) A part judgment of a judgment, under an agreement that such payment shall be a full satisfaction, does not discharge the judgment.—*Campbell v. Booth*, 8 Md. 107.

(c) The acceptance of a part of what is due as a payment in full is not binding on the creditor, even though he gives a receipt in full.—*Jones v. Ricketts*, 7 Md. 108. [*Cited and annotated in 20 L. R. A. 786, 788, 790*, on accord and satisfaction by part payment.]

(d) Where a judgment creditor executed a receipt for a certain sum in full of all judgments, on which more was then due than the amount paid, the fact that the debtor traveled a considerable distance in order to make the payment does not amount to such additional consideration as will render the receipt binding as a receipt in full.—*Jones v. Ricketts*, 7 Md. 108.

### § 13. Conveyance or surrender of property, rights, or claims.

#### *Cross-References.*

As consideration, see ante, §§ 5, 8.

Question for jury, see post, § 27.

Conveyances in payment of debts, see "Payment," § 29.

(a) A delivery of personal property by the defendant to the plaintiff, in consideration of the plaintiff's undertaking to pay all the defendant's debts, may be pleaded, as accord and satisfaction, in bar of an action on a bond.—*McCreary v. McCreary*, 5 G. & J. 147.

### § 14. Giving additional or different security.

#### *Cross-Reference.*

For less sum, see ante, §§ 8, 9.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 15. Execution of accord as satisfaction.

### § 16.—Necessity in general.

(a) To constitute a bar, an accord must be accompanied by a satisfaction, and must be executed, not merely executory.—*Flack v. Garland*, 8 Md. 188.

### § 17.—Effect of accord without satisfaction.

(a) An accord without satisfaction does not constitute a good defense to an action on the original obligation.—*Flack v. Garland*, 8 Md. 188.

### § 18.—Sufficiency in general.

#### *Cross-Reference.*

Question for jury, see post, § 27.

(a) Where a plaintiff, after an injury sustained in his person from the tort of the defendant, agrees with the defendant or his agent that, in satisfaction of such injury, the defendant should pay the expenses incurred by the plaintiff by his detention in consequence of his injury, and should furnish him with a free conveyance to his point of destination, and the defendant performs his part of the agreement, it is full satisfaction, barring recovery of further damages for the tort.—*Stockton v. Frey*, 4 Gill 406, 45 Am. Dec. 138. [*Cited and annotated in 20 L. R. A. 806, 807, on accord and satisfaction by part payment.*]

### § 19.—Acceptance of new agreement.

(a) Where a creditor and debtor agree that the debt shall be discharged in consideration of the payment of an annuity, the right to insist on the original indebtedness is extinguished.—*Northern Cent. Ry. Co. v. Hering*, 93 Md. 164, 48 Atl. 461.

(b) The deposit of a note and mortgage with a third person pursuant to an agreement between the payee of the note and the maker that the instruments were to be delivered to the payee upon surrender of a prior note, in full satisfaction of which the note and mortgage were given, may be pleaded as an accord and satisfaction in an action on the old note, notwithstanding that, after the note and mortgage had been deposited, the maker directed the depository not to deliver them to the payee, as the maker had no right to revoke the depository's agency, and, upon tender of the old note, the new note and mortgage became the absolute property of the payee.—*Creager v. Link*, 7 Md. 259.

### § 20. Validity.

#### *Cross-References.*

See, also, ante, § 3; post, § 26

(a) That a debtor inducing his creditor to agree to receive a less sum than the debt, and release corporate stock held as collateral, failed to inform the creditor that he had made overtures to the corporation for an advantageous sale of its property, thereafter consummated, which increased the value of the stock, did not invalidate the agreement, nor preclude the debtor from compelling specific performance thereof, since he owed no duty to the creditor to disclose such fact.—*Chicora Fertilizer Co. of Charleston, S. C., v. Dunan*, 91 Md. 144, 46 Atl. 347, 50 L. R. A. 401. [*Cited and annotated in 11 L. R. A. (N. S.) 1018, 1026, on part payment as consideration for discharge of undisputed debt.*]

### § 21. Rescission by parties.

#### *Cross-Reference.*

Rescission of settlement, see "Compromise and Settlement," § 18.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 22. Impeaching or setting aside.

§ 23. Operation and effect of satisfaction.

*Cross-References.*

By joint wrongdoers, see ante, § 3.

Subject-matter, see ante, § 2.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 24. Rights and liabilities of parties as to third persons.

§ 25. Pleading.

*Cross-References.*

See "Libel and Slander," § 100.

As affected by stipulation, see "Stipulations," § 14.

On appeal from justice's court, see "Justices of the Peace," § 174.

Plea of payment, see "Payment," §§ 55-79.

Plea of payment distinguished from plea of accord and satisfaction, see "Payment," § 55.

(a) In assumpsit by principals for the price of goods sold for them by factors, the vendees (defendants) cannot, under plea of general issue, show that the factors agreed to receive in payment their own notes usuriously discounted by defendants.—*Sangston v. Maitland*, 11 G. & J. 286.

§ 26. Evidence.

*Cross-Reference.*

Parol evidence to vary written statement, see "Evidence," § 397.

§ 27. Questions for jury.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## ACCOUNT.

### *Scope-Note.*

[INCLUDES actions to compel the rendering of accounts, more particularly common law actions of account or account render and similar statutory remedies and equitable actions of account, and operation and effect of accounts rendered and settled, either in such actions or by voluntary act of the parties; nature and scope of the remedy to obtain an account in general; grounds of such actions and defenses thereto; by and against whom they may be maintained; jurisdiction to compel accounting and proceedings therefor, and proceedings before auditors, referees, masters, etc; incidental relief; judgments or decrees and enforcement thereof; review of proceedings; and opening, correcting, surcharging, and falsifying accounts in general.

[EXCLUDES actions on open accounts (see "Account, Action on") and on accounts stated (see "Account Stated"); settlements of balance of mutual accounts (see "Compromise and Settlement"); remedies for accounting by persons in particular relations to others or acting in particular fiduciary capacities (see "Executors and Administrators"; "Principal and Agent"; "Partnership"; "Trusts"; and other specific heads); accounting as incidental to other relief (see "Discovery"; "Injunction"; "Patents"; and other specific heads); annexing or furnishing copies of accounts alleged in pleading (see "Pleading"); admissibility and effect of accounts in evidence (see "Evidence"); and reference of actions involving accounts (see "Reference"). For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

#### **I. Right of Action and Defenses.**

- § 1. Nature and grounds of right to an account.
- § 2. Agreement to render account.
- § 3. Joint ownership or interest in property or profits.
- § 4. Fiduciary relations.
- § 5. Mutual accounts.
- § 6. Complicated transactions or circumstances.
- § 7. Fraudulent or other wrongful acts or conduct.
- § 8. Defenses.
- § 9. Persons entitled to an account.
- § 10. Persons liable to an account.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

**II. Proceedings and Relief.**

- § 11. Action of account or account render.
- § 12. Equitable jurisdiction.
- § 13. Equitable actions.
- § 14. — Nature and scope of remedy.
- § 15. — Limitations and laches.
- § 15(a) — Demand and notice to account.
- § 16. — Parties.
- § 17. — Pleading.
- § 18. — Evidence.
- § 19. — Trial or hearing, and interlocutory judgment or decree.
- § 20. — Taking and stating account, and reference therefor.
- § 20(a) — Compensation of auditors and referees.
- § 21. — Incidental relief.
- § 22. — Final judgment or decree and review.

**III. Operation and Effect of Accounting.**

- § 23. Conclusiveness of voluntary accounting.
- § 24. Conclusiveness of judicial settlement.
- § 25. Opening and correcting.
- § 26. Surcharging and falsifying.

*Cross-References.*

- See "Account, Action on"; "Account Stated." Account as subject of mortgage, see "Chattel Mortgages," § 11.
- Accounting as equitable defense in action at law, see "Action," § 24.
- Best and secondary evidence as to contents of books of account, see "Criminal Law," § 402.
- Books of account as evidence, see "Criminal Law," § 434; "Evidence," § 354.
- Compromise and settlement of mutual accounts, see "Compromise and Settlement."
- Concurrent jurisdiction of law and equity, see "Equity," § 44.
- Evidence preliminary to introduction of books of account in evidence, see "Evidence," § 376.
- Filing or serving copy of account alleged in pleading, see "Pleading," § 330.
- Forgery, see "Forgery," § 7.
- Illegality of transaction as ground of defense, see "Equity," § 25.
- Interest on accounts, see "Interest," § 18.
- Jurisdiction of court commissioner, see "Court Commissioners," § 4.
- Jurisdiction of courts of general original jurisdiction, see "Courts," § 125.
- Jurisdiction of municipal or city court, see "Courts," § 188.
- Notice of pendency of action, see "Lis Pendens," § 15.
- Reference of actions involving accounts, see "Reference," §§ 8, 17, 72.
- Retention of jurisdiction by courts of equity to award complete relief, see "Equity," § 38.
- Accounting by particular classes of persons.*
- See "Brokers," §§ 28, 37; "Clerks of Courts," §§ 35, 61; "Executors and Administrators," §§ 417, 458-516; "Factors," § 32; "Judges," § 22; "Justices of the Peace," § 17; "Officers," § 112; "Receivers," §§ 102, 190-204, 211; "Sheriffs and Constables," § 71; "United States Marshals," § 25.
- Assignees for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 364-406.
- Assignees or trustees in insolvency, see "Insolvency," §§ 127-136.
- County officers, see "Counties," §§ 80, 94.
- Foreign and ancillary receivers, see "Receivers," § 211.
- Grantee in fraudulent conveyance, see "Fraudulent Conveyances," § 182.
- Guardians, see "Guardian and Ward," §§ 137-165.
- Guardians or committees of insane persons, see "Insane Persons," § 42.
- Highway officers, see "Highways," § 96.
- Insurance agents, see "Insurance," § 82.
- Mortgagees, see "Chattel Mortgages," § 300; "Mortgages," § 619.
- Municipal officers, see "Municipal Corporations," § 172.
- Partners, see "Partnership," §§ 81, 297-348, 376.
- Pledgees, see "Pledges," § 51.
- Principal, involving liability of surety, see "Principal and Surety," § 78.
- Receivers of corporations, see "Corporations," § 622.
- Referees in bankruptcy, see "Bankruptcy," § 223.
- School treasurer, see "Schools and School Districts," § 63.
- State officers, see "States," § 76.
- Tax collectors, see "Schools and School Districts," § 106; "Taxation," § 557; "Towns," § 59.
- Town officers, see "Towns," § 32.
- Trustees, see "Trusts," §§ 289-333.
- Trustees in bankruptcy, see "Bankruptcy," § 365-373.

United States officers, see "United States," § 44.

*Accounting between persons or corporations occupying particular relations.*

See "Attorney and Client," §§ 117-121, 127; "Landlord and Tenant," § 331; "Master and Servant," § 81; "Principal and Agent," §§ 66, 78.

Buyer and seller of logs, see "Logs and Logging," § 34.

Co-tenants, see "Tenancy in Common," § 37. County and state, see "Counties," § 156.

Insurance agents and companies, see "Insurance," § 82.

Mortgagors and mortgagees, see "Chattel Mortgages," § 300; "Mortgages," § 619.

Municipal corporation and county, see "Municipal Corporations," § 882.

Partners, see "Partnership," §§ 81, 297-348, 376.

Pledgor and pledgee, see "Pledges," § 51.

*Accounting incidental to particular actions or proceedings.*

As affecting nature of action as legal or equitable, see "Action," §§ 22-25.

By landlord against tenant, see "Landlord and Tenant," § 331.

For infringement of copyright, see "Copyrights," § 87.

For taxes paid, see "Taxation," § 543.

For timber cut from public lands, see "Public Lands," § 13.

To open default judgment, see "Judgment," § 163.

To redeem from execution sale, see "Execution," § 301.

To redeem from mortgage sale, see "Chattel Mortgages," § 300; "Mortgages," § 619.

To redeem pledged property, see "Pledges," § 51.

## I. RIGHT OF ACTION AND DEFENSES.

### § 1. Nature and grounds of right to an account.

(a) A. conveyed to trustees real and personal estate in trust, to pay the expenses of the trust, certain preferred debts, and then other debts. The trustees were authorized to appoint an attorney under them to execute the trusts. The trustees appointed A., who managed the trust several years, and during those years, for the purposes of the trust, made advances from his own funds, which advances were confirmed by the trustees, and were partly paid. On the death of A. there was awarded to his estate a further sum for his services, and B. was appointed agent with the same powers. He, as agent, took possession of the books, vouchers, deeds, etc., both of A. and the trustees, relating to the trusts, proceeded to act in execution thereof, and recognized and acknowledged the claims of A.'s estate upon the trust funds. *Held*, in a bill by the administrators of A. against B. for account, discovery, and relief, that these facts showed sufficient privity between the parties to sustain the bill.—*Williams v. West*, 2 Md. 174.

### § 2. Agreement to render account.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 3. Joint ownership or interest in property or profits.

(a) The remedy of part owners of a ship to obtain an adjustment of the ship's ac-

count among themselves is a suit in equity.—*Milburn v. Guyther*, 8 Gill 92, 50 Am. Dec. 681.

### § 4. Fiduciary relations.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 5. Mutual accounts.

(a) The assistance of equity is not necessary to take an account which consists of only one item on one side and several items of set-off on the other.—*Oliver v. Palmer*, 11 G. & J. 426.

### § 6. Complicated transactions or circumstances.

### § 7. Fraudulent or other wrongful acts or conduct.

### § 8. Defenses.

*Cross-Reference.*

Illegality of transactions, see "Equity," § 25.

### § 9. Persons entitled to an account.

### § 10. Persons liable to account.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## II. PROCEEDINGS AND RELIEF.

*Cross-References.*

Amendment setting up new cause of action, see "Pleading," § 248.

Bill of particulars, see "Pleading," § 317.

Cancellation of release in action for accounting, see "Release," § 24.

Decree based on general prayer for relief, see "Equity," § 427.

Jurisdiction of court commissioner, see "Court Commissioners," § 4.

Jurisdiction of courts of general original jurisdiction, see "Courts," § 125.

Jurisdiction of municipal or city court, see "Courts," § 188.

Multifariousness, see "Equity," §§ 146-150.

Notice of pendency of action, see "Lis Pendens," § 15.

Production and inspection of writings, see "Discovery," § 84.

Right to jury trial, see "Jury," § 14.

Rulings as to weight and sufficiency of evidence, see "Trial," § 384.

Surplusage in verdict, see "Trial," § 336.

Trial by court without jury, see "Trial," § 367.

### § 11. Action of account or account render.

### § 12. Equitable jurisdiction.

#### *Cross-References.*

On ground of complicated transactions or circumstances, see ante, § 6.

On ground of fiduciary relations, see ante, § 4.

On ground of fraud, see ante, § 7.

Accounting as equitable defense in action at law, see "Action," § 24.

Concurrent with law, see "Equity," § 44.

Retention of jurisdiction acquired, see "Equity," § 38.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 13. Equitable actions.

#### *Cross-Reference.*

Production and inspection of writings, see "Discovery," § 84.

### § 14.— Nature and Scope of remedy.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 15.— Limitations and laches.

#### *Cross-Reference.*

Limitation of actions, see "Limitation of Actions," § 60.

(a) After a decree to account, defendant, being in court with all the material in his possession by which an account could be taken, can take no advantage of the apparent laches of complainant.—Glenn v. Smith, 17 Md. 260.

### § 15(a).— Demand and notice to account.

#### *Cross-Reference.*

See 1 Cent. Dig. Acct. § 73.

No paragraphs in this digest. For cases in other states, see cross-reference to Century Digest, *supra*.

### § 16.— Parties.

(a) A bill by M. and others against K. al-

leged that, M. and K. being sureties for certain debts due by T., T. had assigned to K., in trust to secure them, three single bills of H., indorsed by T.; that T. had secured said bills by a lien on land; that K. had agreed to apply the proceeds of the bills to pay such debts as he was surety for, and, secondly, to pay such debts as M. and he were sureties for; and that T. had mortgaged the resulting trust fund to the complainants to secure the payment of debts of his that they were sureties for in case of non-payment by him. The bill sought an account from K. Held, that T. was a necessary party, but H. was not.—Kunkel v. Markell, 26 Md. 390.

### § 17.— Pleading.

#### *Cross-References.*

Bill of particulars, see "Pleading," § 317.

Multifariousness, see "Equity," §§ 148, 150.

Amendment setting up new or different cause of action, see "Pleading," § 248.

(a) A bill brought by one who borrowed money from a bank and gave a mortgage as security, alleging that plaintiff had fully paid the debt, and praying for an accounting between the parties and an injunction restraining the enforcement of the mortgage pending the accounting, *held* to be for an accounting.—American Bonding Co. of Baltimore v. State, 120 Md. 305, 87 Atl. 922.

(b) A bill averring a fraudulent omission in the inventory of an administrator of money due decedent from a defendant alleged a loan by decedent to said defendant, and its nonpayment to her, and alleged payment to the administrator since her death. The answers admitted the loan, and the making of a note evidencing it, also nonpayment to decedent, but denied the indebtedness, and alleged that the debt was not due the estate, because decedent had in her lifetime given it to her son, and requested the payor to execute another note for same, payable to the son, which was done; the old note being surrendered to payor. *Held*, that the averments in the answer as to payment, although stated affirmatively, were not new matters of avoidance, but were responsive to the allegations of the bill; it not being for a general account.—Davis v. Crockett, 88 Md. 249, 41 Atl. 66.

(c) A contract for the right to manufac-

ture certain patent medicines, which reserved a royalty to the vendor, provided that if the vendor's son failed within a year from the date of the contract to enter into the same covenants as the vendor, or proof of his death was not made, the obligation to pay the royalty should cease. *Held*, that a bill by the vendor for an accounting must show that within a year the son executed the covenants agreed on, or that proof of his death was made.—*Meyer v. Saul*, 82 Md. 459, 33 Atl. 539.

(d) A bill by M. and others against K. alleged that M. and K., being sureties for T., T., to secure them, assigned to K., in trust, three single bills of H., indorsed by T., and took from K. a receipt therefor, at the same time guarantying that the bills should be further secured by a deed of trust of certain lands theretofore conveyed to him by M. and K.; that K. agreed to apply the proceeds of the single bills—First, to pay expenses incurred in selling said lands; second, to take his share of the purchase money, and to apply the balance to such debts of T. as K. and M. were sureties for, and to pay such other debts of T. as K. and M. might be jointly liable for; and that T. had mortgaged the resulting trust fund in K.'s hands to secure the payment of his debts that the complainants were sureties for, in case their debts were not paid by him. The bill sought for an account from K. *Held* that, as complainants had only a contingent interest in the trust fund that resulted to T., dependent upon the nonpayment of the debts secured by the mortgage lien upon it, it became necessary for them to aver that those debts continued to exist and were unsatisfied, either in whole or in part.—*Kunkel v. Markell*, 26 Md. 390.

(e) Where an executor renounced all right to administer, and letters were issued to complainant on a bill by him for an accounting, a plea that defendant had settled with the executor, and by such settlement there was a balance due to defendant, was insufficient, unless supported by answer denying receipt of any part of the money for which defendant was called to account after the time when the account stated was adjusted.—*Danels v. Taggart*, 1 G. & J. 311.

## § 18.—Evidence.

### Cross-Reference.

Receipt as evidence of payment, see "Payment," § 74.

(a) Where a rule of court requires the auditor, on filing an account, to give a certain notice of the filing and time of hearing to every party in the cause, or to his solicitor, an allowance to the auditor for such notices is *prima facie* evidence that the notices were given.—*Lindsay v. Kirk*, 95 Md. 50, 51 Atl. 960.

(b) Where a bill is filed to enforce the payment of a specific sum of money, and the cause is referred to an auditor, with directions to state an account, such order is not in the nature of a decree to account, which will make both parties actors, and, unless plaintiff shows himself entitled to the particular claim, the bill will be dismissed.—*Frieze v. Glenn*, 2 Md. Ch. 361.

(c) Where defendant consents to the ratification of an audit which charges him with a sum of money, this is sufficient evidence that he received it.—*Berry v. Pierson*, 1 Gill 234.

## § 19.—Trial or hearing, and interlocutory judgment or decree.

### Cross-References.

Right to jury trial, see "Jury," § 14.

Rulings as to weight and sufficiency of evidence on trial by court, see "Trial," § 384.

Trial by court without jury, see "Trial," § 367.

(a) On a bill for discovery, relief, and account, the right of plaintiff must be first established and decided, after which an account may be taken.—*Neale v. Hagthorp*, 3 Bland 551. [*Cited and annotated in 22 L. R. A. (N. S.) 455, on right of next of kin to maintain action in interest of estate.*]

## § 20.—Taking and stating account, and reference therefor; exceptions.

### Cross-Reference.

Reference in actions involving accounts, see "Reference," §§ 8, 17, 72.

(a) Under rule 19 of the circuit court of Baltimore City, requiring the auditor, on filing an account, to give certain notice of the filing and time of hearing to every party in the cause or his solicitor, an al-

lowance to the auditor for such notices is prima facie evidence that the notices were given.—*Lindsay v. Kirk*, 95 Md. 50, 51 Atl. 960.

(b) Under an order passed in pursuance of Code of 1860, art. 29, § 9 (see Code 1911, art. 26, § 9), that the accounts and dealings between the parties be audited, the proceedings before the auditors must be the same as in actions of account after judgment of quod computet. They have no power to try all questions in dispute between the parties, upon testimony taken by them, as if they were a jury regularly impaneled for that purpose.—*Wisner v. Wilhelm*, 48 Md. 1.

(c) While equity will not open an auditor's accounts at the instance of a party in default, it will, where the accounts have to be remanded to the auditor for restatement for other causes, permit such party to produce his evidence to entitle him to a credit for which he claims an allowance.—*Barnum v. Barnum*, 42 Md. 251.

(d) Where a proceeding in equity to enforce a vendor's lien is ex parte, upon default of defendant's appearance, the cause is not ready for a final decree, but should be referred to an auditor, and an account stated between the parties, more especially where the complainant sets out in the bill the defendant's refusal to come to a settlement because there were unsettled accounts between them, and in the prayer of the bill prays for an account.—*Bratt v. Bratt's Adm'r*, 21 Md. 578.

(e) Under a decree that the auditor shall state the account from proofs already in the cause, no notice to parties is required; the object of such notice being only to enable parties to produce proof to the auditor, which under this form of reference is inadmissible.—*Calvert v. Carter*, 18 Md. 73.

(f) Exceptions to an auditor's report, being filed before action of court on such report and before submission of the cause, are in time, and ought to be considered.—*Calvert v. Carter*, 18 Md. 73.

(g) An exception to an auditor's account that "the exceptant is entitled to credits in

addition to those given him in said accounts" is too general.—*Calvert v. Carter*, 18 Md. 73.

(h) It is competent to restrict an auditor to the pleadings and proofs already in a cause.—*Calvert v. Carter*, 18 Md. 73.

(i) It is not the province of the auditor to tax costs in his account; but his so doing is no ground for reversal, when the subject of costs can be disposed of by decree of court.—*Calvert v. Carter*, 18 Md. 73.

(j) A decree on a bill to prevent a party from obtaining a grant of land claimed by complainant directed the conveyance of the land to complainant. Held that, though the decree was not a bar to a subsequent bill for an account of the rents and profits, yet no allowance should be made for improvements made by defendant, nor any charge for timber or wood cut by him from the land.—*West v. Jarrett*, 3 H. & J. 485.

(k) General exceptions that the auditor has stated against the evidence will not be considered by the chancellor.—*Scrivener v. Scrivener*, 1 H. & J. 743.

(l) After a commission to account, which had been issued to commissioners at a distance from the court, had been returned without anything having been done, the plaintiff moved "for another commission to some persons in Annapolis to audit the same accounts for his more easy laying the accounts of the deceased before them," which was granted.—*Birchfield v. Vanderheyden*, 1 Bland 465, note.

#### §20(a).—Compensation of auditors and referees.

##### *Cross-References.*

See 1 Cent. Dig. Acct. § 127.

See "Reference," § 76, in this digest.

Fees of masters in chancery, see "Equity," § 394.

#### §21.—Incidental relief.

##### *Cross-Reference.*

Cancellation of release in action for accounting, see "Release," § 24.

(a) A bill, averring that a bill of sale absolute in form was given as security for notes, and that, though the notes have been paid, the mortgagee has seized the goods with intent to sell them, and praying that the bill of sale be declared a mortgage and



delivered up for cancellation, and that an account be stated, and for an injunction restraining the mortgagee from selling the goods, authorizes the injunction as auxiliary to the accounting.—*Laeber v. Langhor*, 45 Md. 477.

## § 22.—Final judgment or decree and review.

### *Cross-Reference.*

Decree based on general prayer for relief, see "Equity," § 427.

(a) Upon a bill by a debtor against a creditor for an accounting, equity has power to decree payment of the amount found due by the debtor.—*American Bonding Co. of Baltimore v. State*, 120 Md. 305, 87 Atl. 922.

(b) Where an audit is confirmed by the court the approved practice is to pass an order for payment of the claims under the award allowed, but the judgment of the court is effectually pronounced on a claim by confirming an auditor's report if no steps are taken to revoke it.—*Lee v. Boteler*, 12 G. & J. 323.

(c) The auditor's report may be excepted to in the Court of Appeals, and the whole accounts gone into whether general or special exceptions, or none at all, had been taken in the court of chancery.—*Ringgold v. Ringgold*, 1 H. & G. 11, 18 Am. Dec. 250.

## III. OPERATION AND EFFECT OF ACCOUNTING.

### *Cross-Reference.*

Conclusiveness of account stated or voluntary accounting, see "Account Stated," § 8.

## § 23. Conclusiveness of voluntary accounting.

(a) Where, in assumpsit against executors, the only evidence bearing on the question of interest is that of the account books of the deceased, which show a final settlement of all matters embraced in them, in the absence of proof of errors of some kind, such accounts are conclusive, and an instruction "that there was no sufficient evidence in the case to entitle plaintiff to recover the interest claimed in his bill of particulars" is properly given.—*Devecmon v. Shaw*, 69 Md. 199, 14 Atl. 464, 9 Am. St. Rep. 422.

(b) A settled account is conclusive between the parties, unless some fraud, mistake, omission, or inaccuracy is shown.—*Stiles v. Brown*, 1 Gill 350.

(c) A bond to correct errors in the settlement of an account does not vary the rights of the parties, as it contains only what the law provides without it.—*Gover v. Hall*, 3 H. & J. 43.

## § 24. Conclusiveness of judicial settlement.

### *Cross-Reference.*

See ante, § 23.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 25. Opening and correcting.

### *Cross-References.*

Amendment of interlocutory decree, see ante, § 19.

Restoration of amount received on accounting as prerequisite to action to avoid receipts in full, see "Release," § 24.

(a) After the lapse of 20 years, it is too late to open a settlement of accounts, upon the ground of inadvertency, when both parties knew their rights.—*Hutchins v. Hope*, 7 Gill 119.

(b) A voluntary settlement of accounts, not liable to exception on the ground of fraud, is only liable to be surcharged and falsified.—*Gover v. Hall*, 3 H. & J. 43.

## § 26. Surcharging and falsifying.

### *Cross-Reference.*

See ante, § 25.

(a) On leave to surcharge and falsify an account, the parties are limited to the items of surcharge and falsification specified in their pleadings.—*Williams v. Savage Manuf'g Co.*, 3 Md. Ch. 418.

(b) Where an agreement was made to settle a claim presented to complainant in the form of a stated account, which without examination was assumed to be correct, complainant will be allowed to surcharge and falsify such account to the extent of the errors specified in his bill, independently of the question of fraud, actual or constructive.—*Williams v. Savage Manuf'g Co.*, 1 Md. Ch. 306.

(c) Where the accounts upon which a settlement was based were presented to complainant, and he was deprived of much of his mental capacity, and incapable of giving them that examination which was indispensable to their full comprehension, it is the duty of the court, if errors are pointed out, to permit the plaintiff to surcharge and falsify the accounts, though the settlement based upon them was regarded as a family settlement.—*Williams v. Savage Manuf'g Co.*, 1 Md. Ch. 306.

(d) The court is to take the account as stated, and the onus probandi is upon the party having liberty to surcharge and falsify.—*Williams v. Savage Manuf'g Co.*, 1 Md. Ch. 306.

(e) In surcharging and falsifying a settlement of accounts, clear and satisfactory evidence will be required, after a considerable lapse of time, and where there are circumstances tending to show acquiescence in the settlement.—*Gover v. Hall*, 8 H. & J. 48.

## ACCOUNT, ACTION ON.

### *Scope-Note.*

[INCLUDES actions on open accounts, actions of book account or book debt, and similar statutory actions founded on accounts, as distinguished from other forms of action; nature and scope of the remedy in general; grounds of such actions and defenses thereto; by and against whom they may be maintained; proceedings therein; review of proceedings; and costs in such actions.

[EXCLUDES actions to compel accounting (see "*Account*"), and titles of persons liable to account; effect of stating and settling accounts and actions on account stated (see "*Account Stated*"); annexing or furnishing copies of accounts alleged in pleadings in general (see "*Pleading*"); admissibility and effect of accounts and books of account, etc., in evidence (see "*Evidence*"); and reference of actions involving accounts (see "*Reference*"). For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

- § 1. Open accounts in general.
- § 2. — Nature and grounds of action.
- § 3. — Requisites of account.
- § 4. — Defenses.
- § 5. — Filing or delivery of copy of account.
- § 6. — Pleading.
- § 7. — Evidence.
- § 8. — Trial, judgment, and review.
- § 9. Verified accounts.
- § 10. — Nature and subject-matter.
- § 11. — Requisites of affidavit.
- § 12. — Conclusiveness of verification, and defenses.
- § 13. — Pleading.
- § 14. — Evidence.
- § 15. — Trial, judgment, and review.
- § 16. Book account or book debt.
- § 17. — Nature and grounds of action.
- § 18. — Charges in book.
- § 19. — Defenses.
- § 20. — Parties.
- § 21. — Pleading.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

- § 22. — Evidence.
- § 23. — Trial and judgment for account.
- § 24. — Proceedings before auditors or referees.
- § 25. — Final judgment and review.

*Cross-References.*

Action of account or account render, see "Account," § 11.  
 Action on account stated, see "Account Stated," § 18.  
 Filing or serving copy of account alleged in pleading in general, see "Pleading," § 330.  
 Jurisdiction as dependent on amount or value in controversy, see "Courts," § 121.  
 Limitation of actions, see "Limitation of Actions," §§ 29, 53, 54.  
 Payment of indebtedness on account, see "Payment."  
 Reference of actions involving accounts, see "Reference," § 8.

Relevancy of charges on account book as evidence in criminal prosecutions, see "Criminal Law," § 338.  
 Removal of cause from state to federal court, see "Removal of Causes," § 72.  
 Splitting cause of action, see "Action," § 53.  
 Splitting cause of action, judgment as bar to another action, see "Judgment," § 595.  
 Statement in summons in justices' courts as to nature of claims, see "Justices of the Peace," § 80.  
 Time from which interest on account begins to run, see "Interest," § 39.

**§ 1. Open accounts in general.**

**§ 2.— Nature and grounds of action.**

*Annotation.*

Right of ward to maintain common law action of account against guardian.—26 L. R. A. (N. S.) 789, note.

Right to sue upon separate items of account for goods sold upon stated periods of credit.—13 L. R. A. (N. S.) 529, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 3.— Requisites of account.**

**§ 4.— Defenses.**

*Annotation.*

Conclusiveness of stated or settled account containing inaccuracy or error in method of mathematical calculation.—23 L. R. A. (N. S.) 787, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 5.— Filing or delivery of copy of account.**

*Cross-Reference.*

Setting out in or annexing to pleading, see post, § 6.

**§ 6.— Pleading.**

*Cross-References.*

Pleading in actions before justices of the peace, see "Justices of the Peace," §§ 90-101.

Verification in suits before justices of the peace, see "Justices of the Peace," § 97.

Filing or delivery of copy of account, see ante, § 5.

Pleading limitations, see "Limitation of Actions," § 183.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 7.— Evidence.**

*Cross-References.*

In actions before justices of the peace, see "Justices of the Peace," § 104.

Testimony as to transactions with persons since deceased, see "Witnesses," § 152.

(a) An account for goods sold and delivered is sufficiently established by the testimony of the vendor's clerk and bookkeeper that, to the best of his knowledge and recollection, such account is correct, especially when supported by the like testimony of one of the vendors.—*Jackson v. West*, 22 Md. 71.

(b) Though the indebtedness of defendant may be the result of a running account, it is not necessary, in an action for money had and received, that plaintiff should produce the running account, and prove all the items thereof, but he may prove any isolated receipt of money by defendant, and claim a verdict for the amount, unless satisfaction of such receipt can, in some way, be shown.—*Planters' Bank v. Farmers' Bank*, 8 G. & J. 449.

(c) If in an action brought on an account proved by the creditor according to Acts 1729, c. 20, § 9 (Code of 1860, art. 37, § 44), all the articles of which account were really lent, sold, or done, defendant on the trial prove that the price of any of the articles

lent, etc., was too high, in cases where there was no agreement as to price, or if defendant prove that part of the sum charged as due has been paid or in any manner satisfied, the probate shall, notwithstanding, be considered as evidence in the cause.—*Sanders v. Leigh*, 2 H. & McH. 380.

### § 8.— Trial, judgment, and review.

#### *Cross-References.*

Default judgment, see "Judgment," §§ 101, 106, 126, 143, 144.

Surplusage in verdict, see "Trial," § 336.

#### *Annotation.*

Collateral attack for fraud not affecting jurisdiction or judgments and orders confirming accounts.—36 L. R. A. (N. S.) 982, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 9. Verified accounts.

### § 10.— Nature and subject-matter.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 11.— Requisites of affidavit.

(a) An account in an action against the mayor and council of Baltimore under Acts 1864, c. 6 (see Balto. City Code, § 312), was made out against "Messrs. R. & B., Commissioners of Madison Square, Baltimore," and an affidavit alleged that there was due by the mayor and common council of Baltimore a certain sum as shown by the annexed account. *Held* to sufficiently show on its face that it was an account, within the terms of the act by which the mayor and city council were indebted to plaintiff, and on which an affidavit could be properly made.—*Baltimore v. Ideson*, 47 Md. 542.

### § 12.— Conclusiveness of verification, and defenses.

### § 13.— Pleading.

### § 14.— Evidence.

#### *Cross-Reference.*

In actions before justices of the peace, see "Justices of the Peace," § 104.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 15.— Trial, judgment, and review.

### § 16. Book account or book debt.

### § 17.— Nature and grounds of action.

### § 18.— Charges in book.

### § 19, 20, 21, 22.— Defenses, Parties, Pleading, and Evidence.

### § 23.— Trial and judgment for account.

#### *Cross-Reference.*

Reception of evidence on trial by court, see "Trial," § 377.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 24.— Proceedings before auditors or referees.

#### *Cross-References.*

Appointment of auditor in action pending on appeal from justice's court, see "Justices of the Peace," § 176.

Reference of actions involving accounts, see "Reference," § 8.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 25.— Final judgment and review.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## ACCOUNTING.

#### *Cross-Reference.*

See "Account."

## ACCOUNT RENDER.

#### *Cross-Reference.*

See "Account," § 11.

#### *Annotation.*

1 Words and Phrases, 92.

## ACCOUNT STATED.

#### *Scope-Note.*

[INCLUDES obligations implied or imposed by law to pay the balance of an account rendered or stated between parties and admitted to be due, independent of any express promise of payment; nature, requisites, incidents, operation, and effect of such statements of accounts; and rights, liabilities, and remedies of the parties.

[EXCLUDES settlements of mutual accounts between parties (see "*Compromise and Settlement*"); proceedings to compel accounting, and judicial settlement of ac-

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

counts (see "*Account*"; and titles of persons, officers, etc., liable to account); actions on accounts as such (see "*Account, Action on*"); accounts alleged in, annexed to, or filed with pleadings (see "*Pleading*"); and proceedings in actions of assumpsit (see "*Assumpsit, Action of*"). For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

- § 1. Nature and subject-matter in general.
- § 2. Persons between whom account may be stated.
- § 3. Previous indebtedness and transactions.
- § 4. Mode of stating and settling.
- § 5. Assent of parties in general.
- § 6. Implied assent of party to be charged.
- § 7. Scope and operation in general.
- § 8. Conclusiveness.
- § 9. Obligation to pay balance.
- § 10. Interest on balance.
- § 11. Opening and correcting.
- § 12. Surcharging and falsifying.
- § 13. Vacating and setting aside.
- § 14. Right of action.
- § 15. Defenses.
- § 16. Time to sue.
- § 17. Parties.
- § 18. Pleading.
- § 19. Evidence.
- § 20. Trial and judgment.

### *Cross-References.*

See "*Account*"; "*Account, Action on*"; "*Assumpsit, Action of*"; "*Interest*," §§ 18, 47. Account for advancements made for improvements by tenant, see "*Landlord and Tenant*," § 157. Complaint as stating cause of action on account stated or joint adventure, see "*Joint Adventures*," § 5. Effect on accounting between partners, see "*Partnership*," § 338.

Effect on usury, see "*Usury*," § 105. Estoppel by acquiescence in account, see "*Estoppel*," § 90. Limitation of actions, see "*Limitation of Actions*," §§ 29, 53, 54, 183. Presumption as to receipt of account stated sent by mail, see "*Evidence*," § 71. Priority of jurisdiction, see "*Courts*," § 475.

#### **§ 1. Nature and subject-matter in general.**

##### *Annotation.*

What constitutes an account stated.—27 L. R. A. 811, note.

Character of the claims which may be the subject of the account stated.—45 L. R. A. (N. S.) 534, note.

(a) An account stated is an admission of a sum of money being due from the defendant to plaintiff.—*Lyell v. Walbach*, 111 Md. 610, 75 Atl. 339.

(b) Where plaintiff's action was founded on an account stated between plaintiff and

defendant, a charge that plaintiff could not recover, because there was no evidence of an account stated between plaintiff's intestate and his personal representatives and defendant, was properly refused.—*McCarty v. Harris*, 98 Md. 741, 49 Atl. 414.

(c) Where the declaration is a count on an account stated, it is competent to give in evidence an award made between the parties and an admission of the balance due.—*Buschman v. Morling*, 30 Md. 384. [Cited and annotated in 27 L. R. A. 818, on what constitutes account stated.]

**§ 2. Persons between whom account may be stated.**

**§ 3. Previous indebtedness and transactions.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 4. Mode of stating and settling.**

*Annotation.*

Statement of amount due on instrument for payment of money.—24 L. R. A. (N. S.) 820, note.

(a) A party who pleads a stated account must show that it was in writing, and likewise the balance in writing, or at least set forth what the balance was; but he need not show that it was signed by the parties, as acquiescence in it without objection for a length of time will render it a stated account.—Wood v. Gault, 2 Md. Ch. 433. [*Cited and annotated in 27 L. R. A. 815, on what constitutes account stated; in 29 L. R. A. (N. S.) 335, on effect of retaining statement of account to render it an account stated.*]

**§ 5. Assent of parties in general.**

*Annotation.*

Effect of dispute as to certain items of an account upon assent to other items.—7 L. R. A. (N. S.) 924.

(a) Declarations and admissions by defendant to a third party, not an agent of plaintiff, of an indebtedness to plaintiff, are not sufficient evidence of an account stated.—Hoffar v. Dement, 5 Gill 132, 46 Am. Dec. 628. [*Cited and annotated in 27 L. R. A. 815, on what constitutes account stated.*]

**§ 6. Implied assent of party to be charged.**

*Cross-Reference.*

Questions for jury, see post, § 20.

*Annotation.*

Effect of retaining statement of account to render it an account stated.—29 L. R. A. (N. S.) 334, note.

(a) Where a depositor's bank book had been balanced, and the bank book and canceled checks returned to him, after the lapse of a reasonable time, where no objection was made, it will be presumed that the account as balanced and the checks returned were all correct; but such presumption can be repelled by showing that the error or fraud

complained of was not discoverable by the exercise of reasonable care, or that there was no such appearance of things as to excite the suspicion of a reasonable man.—Hardy v. Chesapeake Bank, 51 Md. 562, 34 Am. Rep. 325. [*Cited and annotated in 27 L. R. A. 426, 430, on depositor's duty as to forged checks charged to him by bank; in 36 L. R. A. 539, on liability on forged commercial paper; in 7 L. R. A. (N. S.) 750, on effect of intrusting examination of vouchers to guilty employee, on right to recover amount of forged or raised checks paid by bank; in 20 L. R. A. (N. S.) 80, on loss or prejudice from negligent failure to give prompt notice of forgery of check as condition of bank's exoneration from liability; in 29 L. R. A. (N. S.) 339, 349, on effect of retaining statement of account to render it an account stated.*]

(b) The rule that failure of a bank to object to an account rendered it by another bank raises a presumption of the correctness of the account is not affected by the fact that the bank receiving the account has suspended payment and general banking operations, when it appears that such bank was, notwithstanding, engaged in settling up its business.—Union Bank v. Planters' Bank, 9 G. & J. 439, 31 Am. Dec. 113. [*Cited and annotated in 29 L. R. A. (N. S.) 343, 350, on effect of retaining statement of account to render it an account stated.*]

(c) Where accounts were rendered by one banking institution to another, according to a proved usage between them, and where it was further proved that, in case either objected to the account of the other, it was the usage for the objecting bank to give notice thereof to the other, it was held that, from the absence of such objection, the jury might infer that the bank receiving the account acquiesced in its correctness.—Union Bank v. Planters' Bank, 9 G. & J. 439, 31 Am. Dec. 113. [*Cited and annotated in 29 L. R. A. (N. S.) 343, 350, on effect of retaining statement of account to render it an account stated.*]

**§ 7. Scope and operation in general.**

(a) Presentation of a bill for paying to defendant, his acquiescence therein, and his promise to pay, constitute an admission that

the necessary steps have been taken, and that the paving had been done.—*Clemens v. Baltimore*, 16 Md. 208.

### § 8. Conclusiveness.

#### *Cross-Reference.*

Estoppel by acquiescence in account, see "Estoppel," § 90.

#### *Annotation.*

Conclusiveness of stated or settled account containing inaccuracy or error in method of mathematical calculation.—23 L. R. A. (N. S.) 787, note.

(a) Where, in assumpsit against executors, the only evidence bearing on the question of interest is that of the account books of the deceased, which show a final settlement of all matters embraced in them, in the absence of proof of errors of some kind, such accounts are conclusive, and an instruction "that there was no sufficient evidence in the case to entitle plaintiff to recover the interest claimed in his bill of particulars" is properly given.—*Devecmon v. Shaw*, 69 Md. 199, 14 Atl. 464, 9 Am. St. Rep. 422.

(b) A settled account is conclusive between the parties, unless some fraud, mistake, omission, or inaccuracy is shown.—*Stiles v. Brown*, 1 Gill 350.

(c) A bond to correct errors in the settlement of an account does not vary the rights of the parties, as it contains only what the law provides without it.—*Gover v. Hall*, 8 H. & J. 43.

### § 9. Obligation to pay balance.

### § 10. Interest on balance.

#### *Cross-Reference.*

See 1 Cent. Dig., Acct. St., §§ 58-60.  
See "Interest," § 47, in this Digest.

### § 11. Opening and correcting.

### § 12. Surcharging and falsifying.

### § 13. Vacating and setting aside.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 14. Right of action.

(a) An account stated may be charged as a distinct cause of action.—*Lyell v. Walbach*, 111 Md. 610, 75 Atl. 339.

### § 15. Defenses.

#### *Annotation.*

Right to defend action on account stated by showing breach of contract on which founded.—6 L. R. A. (N. S.) 820.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 16. Time to sue.

#### *Cross-Reference.*

Pleading limitations, see "Limitation of Actions," § 183.

### § 17. Parties.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 18. Pleading.

#### *Cross-References.*

Bill to reform account, see ante, § 11.  
Amendment setting up new or different cause of action, see "Pleading," § 248.  
Bill of particulars, see "Pleading," § 317.  
Complaint as stating cause of action on account stated, or joint adventure, see "Joint Adventure," § 5.  
Recovery on account stated, in action on account, see "Account, Action on," § 6.

(a) Where the declaration is a count on an account stated, it is competent to give in evidence an award made between the parties and an admission of the balance due.—*Buschman v. Morling*, 30 Md. 384. [Cited and annotated in 27 L. R. A. 818, on what constitutes account stated.]

### § 19. Evidence.

(a) Where the declaration is a count on an account stated, it is competent to give in evidence an award made between the parties and an admission of the balance due.—*Buschman v. Morling*, 30 Md. 384. [Cited and annotated in 27 L. R. A. 818, on what constitutes account stated.]

### § 20. Trial and judgment.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## ACCRETION.

#### *Cross-References.*

Islands formed by accretion in navigable waters, see "Navigable Waters," § 42.  
Jurisdiction of federal court of action involving right to accretions along lands derived through patent issued under laws of Congress, see "Courts," § 285.  
Rights and liabilities of life tenants as to accretions to property, see "Life Estates," § 15.

To banks of navigable waters, see "Navigable Waters," §§ 42, 44.

To banks of non-navigable waters, see "Waters and Water Courses," §§ 93, 111.

To islands in navigable waters, see "Navigable Waters," § 42.

*Annotation.*

1 Words and Phrases, 99-101.

**ACCRUAL.**

*Cross-References.*

Of cause of action, in general, see "Action," § 61.

Of cause of action on bill or note, see "Bills and Notes," § 445.

Of cause of action or defense as affecting limitation, see "Limitation of Actions," §§ 43-64.

Of indebtedness as fixing time from which interest runs, see "Interest," § 44.

Of liability on bonds of public officers, see "Counties," § 98; "Officers," § 129; "Sheriffs and Constables," § 157.

**ACCUMULATIONS.**

*Cross-References.*

Restrictions on trusts for accumulations, see "Perpetuities," § 9.

Rights of devisees and legatees in general, see "Wills," § 728.

Rights of heirs and distributees, see "Descent and Distribution," § 79.

Right to accumulations on failure of devise or bequest, see "Wills," § 854.

*Annotation.*

1 Words and Phrases, 103-105.

**ACCUSATION.**

*Cross-References.*

Of crime, see "Criminal Law," §§ 208-213; "Indictment and Information"; "Libel and Slander," § 7; "Malicious Prosecution"; "Threats"; "Witnesses," § 345.

Charging offenses in prosecution for crime, see "Indictment and Information."

Defamatory words spoken or published, see "Libel and Slander."

Threats to accuse, see "Threats."

*Annotation.*

1 Words and Phrases, 105-106.

**ACID.**

*Cross-References.*

Disfigurement by use of, see "Mayhem," §§ 1, 5.

Injuries to servant, see "Master and Servant," § 218.

*Annotation.*

1 Words and Phrases, 107.

**ACKNOWLEDGMENT.**

*Scope-Note.*

[INCLUDES formal declarations of the genuineness of an instrument in writing, made by a person executing it, or proof of due execution of such an instrument, made by an attesting witness or other person, before a competent court or officer, to establish the validity of such instrument, or to entitle it to be admitted in evidence or to be recorded; nature and necessity of making acknowledgment; making, taking, form, and requisites of such acknowledgments, and form and requisites of certificates of acknowledgment; amendment of defects therein; and conclusiveness and effect of acknowledgments and of certificates of acknowledgment.

[EXCLUDES effect of record of acknowledgment with instrument (see "Records"); and record or transcript of record of unacknowledged or defectively acknowledged instrument as evidence (see "Evidence"). For complete list of matters excluded, see cross-references, post.]

*Analysis.*

**I. Nature and Necessity.**

§ 1. Nature and functions in general.

§ 2. What law governs.

§ 3. Statutory provisions.

§ 4. Instruments to be acknowledged or proved.

§ 5. Unacknowledged instruments.

§ 6. Defectively acknowledged instruments.

§ 7. Filling blanks or altering instrument without acknowledgment.



**II. Taking and Certificate.**

- § 8. Nature of officer's act in general.
- § 9. Place of taking.
- § 10. Time of making.
- § 11. Persons who may make acknowledgment.
- § 12. Witnesses who may make proof.
- § 13. Compelling acknowledgment or proof.
- § 14. Authority to take.
- § 15. — In general.
- § 16. — Particular officers.
- § 17. — In other states.
- § 18. — In other countries.
- § 19. — Extraterritorial authority.
- § 20. — Disqualification of officer.
- § 21. — Taking by one of several grantees.
- § 22. Ascertainment of identity of person making acknowledgment or proof.
- § 23. Mode of taking acknowledgment.
- § 24. — In general.
- § 25. — Of married woman.
- § 26. — Of particular persons or officers.
- § 27. Mode of taking proof.
- § 28. Making and requisites of certificate.
- § 29. — Making and form in general.
- § 30. — Venue.
- § 31. — Date.
- § 32. — Recitals as to authority of officer.
- § 33. — Signature and seal.
- § 34. — Record.
- § 35. Contents of certificate.
- § 36. — Matters certified in general.
- § 37. — Acknowledgments of married women.
- § 38. — Acknowledgments of particular persons or officers.
- § 39. Further certificate of authenticity and conformity to law.
- § 40. Errors and defects in certificate.
- § 41. — In general.
- § 42. — Amendment.
- § 43. Curing defects.
- § 44. — Subsequent acknowledgment.
- § 45. — Proof by witnesses.
- § 46. — Judicial proceedings.
- § 47. — Curative statutes.
- § 48. Liability of officer defectively or falsely certifying acknowledgment.

**III. Operation and Effect.**

- § 49. Construction and operation of certificate in general.
- § 50. Surplusage in certificate.
- § 51. Unnecessary acknowledgments.
- § 52. Authenticity of instrument in general.
- § 53. Admissibility of instrument to record.

**III. Operation and Effect—Continued.**

- § 54. Admissibility of instrument in evidence.
- § 55. Conclusiveness of certificate.
- § 56. Grounds of impeaching or contradicting certificate.
- § 57. Acknowledgment under laws of other state or foreign country.

**IV. Pleading and Evidence.**

- § 58. Pleading.
- § 59. Presumptions and burden of proof.
- § 60. Evidence of fact of acknowledgment.
- § 61. Evidence to aid certificate.
- § 62. Evidence to impeach or contradict certificate.

*Cross-References.*

Acknowledgment as affecting admissibility of ancient deeds in evidence, see "Evidence," § 372.

Acknowledgment of ancient documents affecting admissibility of record in evidence, see "Evidence," § 372.

Compensation of county clerk for taking acknowledgment of tax deed, see "Counties," § 78.

Decision of state courts construing statutory requirements as to certificates of acknowledgment of married women as authority in federal courts, see "Courts," § 366.

Defect in record of acknowledgment as affecting subsequent purchasers, see "Vendor and Purchaser," § 231.

Defectively acknowledged deed of adoption, see "Adoption," § 8.

Defectively acknowledged instrument as color of title, see "Adverse Possession," § 71.

Effect of defects in acknowledgment of adoption papers, see "Adoption," § 8.

Effect of provisions of trust deed authorizing trustee to convey by deed duly acknowledged, see "Trusts," § 205.

Effect of record on subsequent purchaser, see "Vendor and Purchaser," § 231.

Failure to acknowledge instrument creating lien for rent as affecting priority, see "Landlord and Tenant," § 248.

Implied repeal of statute, see "Statutes," § 161.

Infancy as disqualifying officer taking acknowledgment, see "Infants," § 7.

Liability on bond of officer certifying acknowledgment, see "Justices of the Peace," § 29; "Notaries," § 11.

Limitation of action for reformation of acknowledgment, see "Limitation of Actions," § 39.

Mandamus to compel correction of certificate, see "Mandamus," § 73.

Necessity for signing and acknowledging contract conveying timber rights to take contract out of statute of frauds, see "Frauds, Statute of," § 101.

Of illegitimate child, see "Bastards," §§ 13, 105.

Of indebtedness, as suspending limitations, or reviving debt barred, see "Limitation of Actions," §§ 141-151.

Of payment, see "Payment," § 35.

Of service of process, see "Process," § 67.

Operation and effect of admissions as evidence, see "Criminal Law," §§ 405-421; "Evidence," §§ 200-265.

Operation and effect of admissions as ground of estoppel in pais, see "Estoppel," § 88.

Parol or extrinsic evidence as to acknowledgment of payment in deeds, see "Evidence," § 419.

Presumption of delivery or of time of delivery from acknowledgment, see "Deeds," § 194.

Presumption of regularity of power of attorney to acknowledge deed, see "Principal and Agent," § 20.

Record of defectively acknowledged mortgage as notice, see "Chattel Mortgages," § 150; "Mortgages," § 171; "Vendor and Purchaser," § 231.

Record of mortgage acknowledged before disqualified officer, see "Chattel Mortgages," § 150.

Record of unacknowledged instruments as notice, see "Trusts," § 23; "Vendor and Purchaser," § 231.

Responsibility for false verification, see "Perjury," § 5.

Unacknowledged instrument as color of title, see "Adverse Possession," § 79.

Want of acknowledgment of contract of sale of land as affecting right to specific performance, see "Specific Performance," § 25.

*Necessity for acknowledgment of particular instruments.*

Acceptance or renunciation of provisions of will, see "Wills," § 793.

Agreements to arbitrate, see "Arbitration and Award," § 6.

Antenuptial agreement, see "Husband and Wife," § 29.

Assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 66.

Assignment of lease, see "Landlord and Tenant," § 78.

Assignment of tax certificate, see "Taxation," § 742.

Certificate of formation of limited partnership, see "Partnership," § 354.

Certificate of incorporation of railroad company, see "Railroads," § 14.

Chattel mortgage, see "Chattel Mortgages," § 61.

Consent to construction of street railroad, see "Street Railroads," § 26.  
 Contract affecting mechanic's lien, see "Mechanics' Liens," §§ 73, 100.  
 Contract or conveyance by married woman, see "Husband and Wife," § 194.  
 Conveyance of easement, see "Easements," § 12.  
 Declaration or certificate of homestead, see "Homestead," § 45.  
 Deed of married woman to bar dower, see "Dower," § 49.  
 Deed or mortgage of homestead, see "Homestead," § 119.  
 Election under will, see "Wills," § 793.

Instrument, map, or plat making dedication, see "Dedication," § 25.  
 Lease, see "Landlord and Tenant," § 35.  
 Mortgage, see "Mortgages," § 59.  
 Patent to state land, see "Public Lands," § 167.  
 Power of attorney, see "Principal and Agent," § 10.  
 Submission to arbitration, see "Arbitration and Award," § 12.  
 Tax deed, see "Taxation," § 766.  
 Town plats, see "Towns," § 3.  
 Transfer by insolvent, see "Insolvency," § 53.  
 Will, see "Wills," §§ 108, 118.

## I. NATURE AND NECESSITY.

- § 1. Nature and functions in general.
- § 2. What law governs.
- § 3. Statutory provisions.

### *Cross-Reference.*

Implied repeal of statute, see "Statutes," § 161.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 4. Instruments to be acknowledged or proved.

### *Cross-Reference.*

Conveyances, and contracts to convey, as instruments by married women, see "Husband and Wife," § 194.

(a) A deed signed by the grantor by attorney is inadmissible as evidence of title, the power of attorney not being produced, and it not appearing that it was acknowledged in the same manner as the deed, and recorded with the deed executed in pursuance thereof.—*Citizens' Fire Insurance, Security & Land Co. v. Doll*, 35 Md. 89. (See Code, art. 21, § 25.)

(b) A deed conveying real and personal property in trust for the separate use of the grantor's wife and children is not affected by a statute governing the authentication of bills of sale and mortgages.—*Stocket v. Holliday*, 9 Md. 480.

(c) Under act Nov. 1766, c. 14, a conveyance of the lands of the wife, in which her husband joined as grantor, could not operate to pass her interest unless acknowledged by him.—*Lawrence v. Heister*, 3 H. & J. 371.

(d) Act 1692, respecting the acknowledgment and recording of conveyances, did not extend to grants by the lord proprietary.—*Calvert v. Eden*, 2 H. & McH. 335.

(e) A deed for the purpose of suffering a common recovery, is good, though not acknowledged.—*Lee v. Hall*, 2 H. & McH. 19.

## § 5. Unacknowledged instruments.

### *Cross-References.*

As color of title, see "Adverse Possession," § 79.

Creation of lien by unacknowledged agreement, see "Liens," § 3.

Record as notice, see "Vendor and Purchaser," § 231.

Record of unacknowledged instrument creating trust, see "Trusts," § 23.

### *Annotation.*

For present statutory provisions as to acknowledgments, see Code, art. 21, §§ 1 *et seq.*

(a) An agreement by a husband and wife in writing to sell land is not effective as to the wife when not acknowledged.—*Steffey v. Steffey*, 19 Md. 5.

(b) An equitable claim under an unacknowledged deed will be enforced in equity except as against a bona fide purchaser without notice.—*Price v. McDonald*, 1 Md. 403, 54 Am. Dec. 657.

(c) Where there was no evidence to warrant a presumption that the original of a deed executed in 1738 was acknowledged, in conformity with the provisions of act 1715, c. 47, a copy could not, per se, be read in evidence.—*Connelly v. Bowie*, 6 H. & J. 141.

(d) A copy of an ancient deed, which does not appear to have been acknowledged, was held not evidence, though the record book from which the copy was taken appears to have been lost.—*Hoddy v. Harryman*, 3 H. & McH. 581. [Cited and annotated in 35 L. R. A. 341, on necessity for calling subscribing witnesses to prove attested instruments.]

## § 6. Defectively acknowledged instruments.

### *Cross-References.*

Curing defects, see post, §§ 43-47.

As color of title sufficient to support adverse possession, see "Adverse Possession," § 71.

Deed of adoption, see "Adoption," § 8.

Defect in record of acknowledgment as affecting subsequent purchasers, see "Vendor and Purchaser," § 231.

Record as notice, see "Mortgages," § 171; "Vendor and Purchaser," § 231.

(a) Where a husband, with his wife, executed a mortgage and filed the same for record, but the acknowledgment was insufficient, it was valid as against a trust deed subsequently made by the husband for the benefit of his wife, who was chargeable with notice of the existence of the mortgage.—*Dyson v. Simmons*, 48 Md. 207.

(b) A subsequent incumbrancer chargeable with actual notice of a pre-existing mortgage will in equity be postponed to it, though the imperfection arises from the fact that it was not properly acknowledged.—*Johnston v. Canby*, 29 Md. 211.

(c) The record of a deed not properly acknowledged is not conclusive notice to bona fide purchasers.—*Johns v. Scott*, 5 Md. 81; *Cockey v. Milne*, 16 Md. 200.

(d) A., before and in contemplation of her marriage, executed, together with her intended husband, a deed of all her property in trust to B., for her sole and separate use. Doubts being entertained as to the validity of this deed, on account of the minority of A. and her future husband, the husband, after the marriage, conveyed the property in trust to the same uses. Afterwards the husband, the wife, and the trustee under the second deed joined in a conveyance of the same property to C., to secure to him a sum of money paid by him to the wife, and to hold the residue, after that object should be accomplished, to her sole and separate use. This deed could not operate as a legal conveyance for want of a privy examination of the wife on the acknowledgment; but it was held that it gave C. a specific lien in equity on A.'s separate estate to the extent of her beneficial interest.—*Berrett v. Oliver*, 7 G. & J. 191.

## § 7. Filling blanks or altering instrument without acknowledgment.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## II. TAKING AND CERTIFICATE.

### *Cross-References.*

Evidence of fact of acknowledgment, see post, § 60.

Evidence to aid certificate, see post, § 61.

Evidence to impeach or contradict certificate, see post, § 62.

Responsibility for false verification, see "Perjury," § 5.

## § 8. Nature of officer's act in general.

(a) In taking and certifying the acknowledgment of conveyances, an officer exercises a power which is strictly ministerial, and in no sense judicial.—*Lewis v. Waters*, 3 H. & McH. 430.

## § 9. Place of taking.

(a) One who permanently resides in one county, spending certain seasons of the year at his country residence in another, cannot acknowledge a deed of lands lying in a third county, while temporarily sojourning at his country residence.—*Hall v. Gittings*, 2 H. & J. 380.

## § 10. Time of taking.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 11. Persons who make acknowledgment.

### *Cross-References.*

Persons whose names do not appear in instrument, see post, § 24.

Presumption of regularity of power of attorney to acknowledge deed, see "Principal and Agent," § 20.

(a) An acknowledgment may be made by attorney.—*Elliott v. Osborn*, 1 H. & McH. 146; *Onion v. Hall*, Id. 173. [Cited and annotated in 41 L. R. A. (N. S.) 810, 817, on form of execution of deed by attorney in fact or agent.]

## § 12. Witnesses who may make proof.

## § 13. Compelling acknowledgment or proof.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 14. Authority to take.

#### *Cross-Reference.*

Record of mortgage acknowledged before disqualified officer as notice to subsequent purchaser, see "Chattel Mortgages," § 150.

#### *Annotation.*

See Code, art. 21, §§ 1 *et seq.*

### § 15.— In general.

(a) A conveyance of personalty acknowledged in the District of Columbia, before two justices in such District, is not acknowledged as required by act 1856, c. 154.—*Berry v. Matthews*, 13 Md. 537. (See Code, art 21. §§ 1 *et seq.*)

(b) Under the act of 1766, ch. 16. § 4, the deed of a nonresident acknowledged by an attorney under a letter proved before but one justice of the peace, is invalid.—*Beall v. Lynn*, 6 H. & J. 336.

(c) A conveyance of land lying in S. county was executed by the grantor, stated to be of Georgetown, in the District of Columbia, and was acknowledged by him in Prince George's county, before A., stated to be first judge of the First judicial district of the state. *Held*, that the deed and acknowledgment, on the face of it, without further evidence, was sufficient to transfer the property to the grantee.—*Teackle v. Nicols*, 3 H. & J. 574.

(d) A citizen of another state could, under act 1766, c. 14, acknowledge a deed before two justices of the peace of any county in the state, though the lands conveyed were located in another.—*Sim v. Deakins*, 2 H. & McH. 46.

### § 16.— Particular officers.

#### *Cross-Reference.*

Disqualification of particular officer to take particular acknowledgment, see post, § 20.

#### *Annotation.*

Power of consul to take acknowledgment of deeds and powers of attorney.— 45 L. R. A. 499, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### §§ 17, 18.— In other states and countries.

#### *Cross-Reference.*

See "Evidence," § 1430.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 19.— Extraterritorial authority.

(a) A justice of the peace may not take an acknowledgment out of the county for which he was appointed.—*Grove v. Todd*, 41 Md. 633, 20 Am. Rep. 76. [*Cited and annotated* in 22 L. R. A. 383, on constitutionality of statute legalizing invalid private contract; in 31 L. R. A. (N. S.) 1077, 1080, on constitutionality of statutes curing defective acknowledgments of conveyances; in 41 L. R. A. (N. S.) 1175, on impeachment of certificate of acknowledgment.]

(b) An acknowledgment purporting to have been made in one county, but in fact made in another, before a justice from the first, is invalid.—*Grove v. Todd*, 41 Md. 633, 20 Am. Rep. 76. [*Cited and annotated* in 41 L. R. A. (N. S.) 1175, on impeachment of certificate of acknowledgment; in 22 L. R. A. 383, on constitutionality of statute legalizing invalid private contract; in 31 L. R. A. (N. S.) 1077, 1080, on constitutionality of statutes curing defective acknowledgments of conveyances.]

(c) A deed should be acknowledged before two justices of the peace in the county where the land lies or the grantor resides.—*Johns v. Reardon*, 3 Md. ch. 57. (See Code, art. 21, §§ 2 *et seq.*)

(d) Where the justice taking the acknowledgment of a deed under act 1729, c. 8, § 5, did not reside in the county where it was taken, the instrument was inoperative.—*Byer v. Etnyre*, 2 Gill 150, 41 Am. Dec. 410. [See Code, art. 21, §§ 2 *et seq.*]

(e) A conveyance of land, acknowledged by the grantor before justices of a county in which he did not reside, and in which the land is not situated, is inoperative.—*Gittings v. Hall*, 1 H. & J. 14.

### § 20.— Disqualification of officer.

#### *Cross-References.*

Conclusiveness of certificate, see post, § 56.

Infancy, see "Infants," § 7.

#### *Annotation.*

Right of interested persons to take acknowledgment.—33 L. R. A. 332, note.

Acknowledgment before a stockholder or officer of a corporation which is a party to the instrument.—23 L. R. A. (N. S.) 1075, note; 41 L. R. A. (N. S.) 375, note.

Validity of acknowledgment of deed of trust taken by trustee.—16 L. R. A. 719, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 21.—Taking by one of several grantees.

## § 22. Ascertainment of identity of person making acknowledgment or proof.

### Cross-Reference.

Certificate as to identity, see post, §§ 36, 37.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 23. Mode of taking acknowledgment.

### Cross-Reference.

Of will by testator in presence of witnesses, see "Wills," § 118.

## § 24.—In general.

### Annotation.

Validity of acknowledgment taken over telephone.—30 L. R. A. (N. S.) 358, note.

(a) The deed would not operate to pass the lands to the bargainee, where the law requires the acknowledgment to be taken before two justices of the peace, and it is taken before the justices separately, at different times and places.—Ridgely v. Howard, 3 H. & McH. 321.

(b) An acknowledgment of a deed by an attorney, as attorney, is sufficient.—Elliott v. Osborn, 1 H. & McH. 146; Onion v. Hall, 1 H. & McH. 173. [Cited and annotated in 41 L. R. A. (N. S.) 810, 817, on form of execution of deed by attorney in fact or agent.]

## § 25.—Of married woman.

### Cross-Reference.

Implied repeal of statute, see "Statutes," § 161.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 26.—Of particular persons or officers.

(a) The deed would not operate to pass the lands to the bargainee, where the law requires the acknowledgment to be taken

before two justices of the peace, and it is taken before the justices separately, at different times and places.—Ridgely v. Howard, 3 H. & McH. 321.

(b) An acknowledgment of a deed by an attorney, as attorney, is sufficient.—Elliott v. Osborn, 1 H. & McH. 146; Onion v. Hall, 1 H. & McH. 173. [Cited and annotated in 41 L. R. A. (N. S.) 810, 817, on form of execution of deed by attorney in fact or agent.]

## § 27. Mode of taking proof.

(a) The deed would not operate to pass the lands to the bargainee, where the law requires the acknowledgment to be taken before two justices of the peace, and it is taken before the justices separately, at different times and places.—Ridgely v. Howard, 3 H. & McH. 321.

## § 28. Making and requisites of certificate.

### Annotation.

See Code, art. 21, § 8.

## § 29.—Making and form in general.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 30.—Venue.

(a) The locality or county in which an acknowledgment was made should appear on the face of the certificate.—Connelly v. Bowie, 6 H. & J. 141.

## § 31.—Date.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 32.—Recitals as to authority of officer.

### Cross-Reference.

Appending title to signature, see post, § 33.

### Annotation.

Sufficiency of abbreviation to show official character of officer.—14 L. R. A. 815, note.

(a) The official character of the persons before whom an acknowledgment was made should appear on the face of the certificate.—Connelly v. Bowie, 6 H. & J. 141.

## § 33.—Signature and seal.

(a) The official character of the persons

before whom an acknowledgment was made should appear on the face of the certificate.—*Connelly v. Bowie*, 6 H. & J. 141.

### § 34.—Record.

(a) Registration in the county in which the land is situated will not cure such a radical defect as an acknowledgment before justices of another county.—*Johns v. Rear-don*, 3 Md. Ch. 57.

### § 35. Contents of certificate.

*Annotation.*

### § 36.—Matters certified in general.

(a) An acknowledgment of a deed purporting to be made by ——— Murray, with—  
See Code, art. 21, § 8.

out other designation of the person making the acknowledgment, is insufficient to convey the title to land.—*Hiss v. McCabe*, 45 Md. 77. [*Cited and annotated in 19 L. R. A. 279, on leaving blank for party's name in certificate of acknowledgment.*]

(b) The certificate of justices of the peace that persons acknowledging the deed were known to them to be the parties named as and professing to be parties to the same is a sufficient compliance with act 1831, c. 205.—*Warner v. Hardy*, 6 Md. 525. (See Code, art. 2, § 8.)

(c) A conveyance by a husband and wife, with an acknowledgment of the wife, reciting that she had been privately examined separate from her husband as to whether she did freely and without fear of her husband convey the same, "and having assured us that she acknowledged the said deed freely and voluntarily, according to the act of assembly in such case made and provided," was insufficient.—*Greene v. Muse*, 2 H. & J. 62.

(d) A certificate of acknowledgment should be in the manner the law directs, and unless so done the acknowledgment is defective, and the deed cannot operate as a bar to the rights of a feme covert.—*Heath v. Eden*, 1 H. & J. 751.

(e) An acknowledgment of a married woman of a deed by herself and husband is defective if it does not substantially pursue the mode prescribed by the act of assembly, whereby femes covert may convey

their interest in lands.—*Corporation Roman Catholic Clergymen v. Hammond*, 1 H. & J. 580.

(f) An acknowledgment to the effect that the grantor "did acknowledge this deed to be the right of [the grantee], his heirs and assigns, forever, according to the intent and meaning thereof," *held* sufficient.—*Blair v. Valiant*, 4 H. & McH. 62.

(g) An acknowledgment by the wife, who was party to the deed, "that she acknowledged the land and premises to be the right, title, and estate of the grantee, according to the direction of the act of assembly in such case made and provided," is a good acknowledgment.—*Hoddy v. Harryman*, 3 H. & McH. 581.

(h) "That the lands and premises were the right, title, and estate of the grantee," but not that the deed was the deed of the grantor, is a good acknowledgment.—*Hoddy v. Harryman*, 3 H. & McH. 581.

(i) An acknowledgment by a married woman that "she acknowledges the land to be the right and estate of the party, his heirs and assigns," concluding with the words "according to act of assembly," was not a sufficient acknowledgment under act 1715, c. 47.—*Lewis v. Waters*, 3 H. & McH. 430.

(j) That the concluding words of a certificate are "according to act of assembly," will not cure an omission to certify that the grantor acknowledged the instrument to be her deed.—*Lewis v. Waters*, 3 H. & McH. 430.

(k) An acknowledgment, certified by the justices to have been made "according to the act of the assembly in that case made and provided," is insufficient.—*Flanagan v. Young*, 2 H. & McH. 38.

(l) An acknowledgment in the words "being by us first examined as the law requires," is not a sufficient acknowledgment under the act of 1699, c. 42, requiring that the married woman shall be examined apart from her husband, and that the person examining her shall certify her examination and acknowledgment.—*Robins v. Bush*, 1 H. & McH. 50; *Robinson v. Lloyd*, Id. 78.

**§ 37.—Acknowledgments of married women.**

*Cross-References.*

See ante, § 36.

Decisions of state courts construing statutory requirements as authority in federal courts, see "Courts," § 366.

*Annotation.*

Form and sufficiency of certificate of married woman's acknowledgment.—45 L. R. A. (N. S.) 1109, note.

(a) The rule that, in certifying the acknowledgment of a deed, substantial compliance with the requirements of the statute is sufficient, and literal conformity is unnecessary, applies equally to acknowledgments by married women.—*Young v. State*, 7 G. & J. 253.

(b) Under the act 1715, ch. 47, § 11, the omission of the words "ill usage" in the certificate of a married woman invalidated the deed, though it contained the recital that the acknowledgment was made by her "of her own free will, and not through any threats of her said husband, or fear of his displeasure."—*Hawkins v. Burriss*, 1 H. & J. 513.

(c) A certificate as to a feme covert, "that she acknowledges the lands to be the right and estate of the party," did not certify her acknowledgment of the deed itself, as required by Acts 1715, c. 47.—*Lewis v. Waters*, 3 H. & McH. 430.

(d) A certificate that the wife was "privately examined" was a sufficient expression of compliance with act 1715, c. 47, § 11, which required her to be "privately examined out of the hearing of her husband."—*Webster v. Hall*, 2 H. & McH. 19, 1 Am. Dec. 370.

**§ 38.—Acknowledgments of particular persons or officers.**

(a) In the last clause of a mortgage, A. was appointed the attorney of the mortgagor, a corporation, to acknowledge the same. The certificate of the justice on the mortgage was as follows: "Personally appeared —, \* \* \* he being known to me to be the person who is named and described as and professing to be the attorney named in the letter or power of attorney contained in the foregoing mortgage or instrument of writing, to be the act and deed

of" the corporation; the words "and acknowledged the said mortgage" being omitted after the word "writing." In the same certificate the justice further certified that, at the same time, the mortgagee appeared, and made oath that the consideration set forth in the mortgage was true and bona fide. The certificate was appended to the mortgage in the usual way, and the same was thereupon duly recorded. *Held*, that said omission did not render the certificate invalid.—*Basshor v. Stewart*, 54 Md. 376.

**§ 39. Further certificate of authenticity and conformity to law.**

*Cross-Reference.*

Evidence to aid certificate in general, see post, § 61.

(a) The certificate of the clerk of the circuit court required to a bill of sale acknowledged before a justice of the peace out of the county where the property is, is of no effect when made two years after the bill of sale was executed and recorded.—*Fersner v. Bradley*, 87 Md. 488, 40 Atl. 58. (See Code, art. 21, §§ 3, 45.)

(b) Under Code of 1860, art 24, § 3, "if acknowledged within the state, but out of the county or city where the real estate lies, the acknowledgment may be made before any justice of the peace of the county or city where the grantor may be at the time of acknowledgment, the official character of the justice being certified by the clerk of the circuit or superior court under his official seal," where a mortgage is duly executed in another county or city than that in which the property lies, before a justice of the peace as to whose official character no certificate by the clerk of the court is attached, the record of such mortgage is unauthorized. (See Code 1911, art. 21, § 3.)—*Sitler v. McComas*, 66 Md. 135, 6 Atl. 527.

(c) The words, "were at the time of so doing," in the certificate of the clerk of the court for the county, in which acknowledgments of a deed were taken before justices of the peace, "that the justices before whom the annexed acknowledgments were made, and who have heretofore subscribed their names, were at the time of so doing justices



\* \* \* in and for said counties," relate as well to the acknowledgment by the parties as to the signing of the certificate, and are in contemplation of law but one act.—*Warner v. Hardy*, 6 Md. 525. [*Cited and annotated* in 19 L. R. A. (N. S.) 438, on admissibility of record, or copy of record, to prove deed under which party offering it claims.]

(d) The clerk of a county court certified that the persons before whom a deed purports to be acknowledged were, at the time of the acknowledgment, and still are, "two justices of the peace for the county aforesaid, and to all certificates given by them, as such, due faith and credit is and ought to be given, as well in courts of justice as thereout." *Held*, that the certificates were sufficient to authorize the recording of the deed.—*Beall v. Lynn*, 6 H. & J. 336.

(e) The words "legally authorized and assigned," in a certificate of the clerk of a county court to a deed acknowledged before two justices of the peace of that county, is a substantial compliance with the directions, and within the meaning of Act Nov., 1766, c. 14, and are words of the same import as "duly commissioned and sworn."—*Hall v. Gittings*, 2 H. & J. 380.

(f) A deed by a widow, acknowledged before two justices of the peace, with a certificate of the clerk of the county "that the gentlemen before whom the above acknowledgment appears to have been taken were at the time two of his lordship's justices of the peace," is valid.—*Griffith v. Ridgely*, 2 H. & McH. 418.

#### § 40. Errors and defects in certificate.

##### *Cross-References.*

Defectively acknowledged instruments, see ante, § 6.

Mandamus to compel correction, see "Mandamus," § 73.

#### § 41.— In general.

(a) The maxim, "Mala grammatica non vitiat," applied to a justice's certificate of acknowledgment of a mortgage by a corporation, that the attorney personally appeared and acknowledged the mortgage to be "his" instead of "its" act and deed.—*Frostburg Mut. Bldg. Ass'n v. Brace*, 51 Md. 508. [*Cited and annotated* in 11 L. R. A. (N. S.)

644, on grammatical defects in certificates of acknowledgment.]

#### § 42.— Amendment.

#### § 43. Curing defects.

#### § 44.— Subsequent acknowledgment.

#### § 45.— Proof by witnesses.

##### *Cross-Reference.*

See ante, § 12, in this Digest.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 46.— Judicial proceedings.

##### *Cross-Reference.*

Limitation of action for reformation, see "Limitation of Actions," § 39.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 47.— Curative statutes.

##### *Annotation.*

See Code, art. 21, §§ 82 *et seq.*; act 1912, ch. 85; act 1914, ch. 259.

(a) On November 29, 1866, T. executed a deed, in which his wife joined to bar her dower, of the fee of a tract of land in F. county, the consideration being love and affection, to certain children of his deceased son, to whom his wife bore no blood relation. The deed purported to have been executed and acknowledged in F. county before a justice of the peace, but was in fact executed and acknowledged in C. county, where the parties lived, before a justice of F. county. Such acknowledgment was invalid, but was cured by act 1867, c. 160, which provided that all deeds so executed and acknowledged since November 1, 1864, should be as valid as if properly acknowledged. In December, 1866, before the passage of such act, T. died intestate, and thereafter his widow filed a bill to have the deed declared a nullity and for an assignment of dower. *Held*, that, as against T. and his heirs, the deed was cured by the statute.—*Grove v. Todd*, 41 Md. 633, 20 Am. Rep. 76. [*Cited and annotated* in 41 L. R. A. (N. S.) 1175, on impeachment of certificate of acknowledgment; in 22 L. R. A. 383, on constitutionality of statute legalizing invalid private contract; in 31 L. R. A. (N. S.) 1077, 1080, on constitutionality of statutes curing defective acknowledgments of conveyances.]

(b) Where, because of imperfect acknowledgment, a deed by husband and wife is invalid as to the wife, such acknowledgment cannot be cured by legislative enactment after the husband's death, in the event that his wife survived him.—*Grove v. Todd*, 41 Md. 683, 20 Am. Rep. 76. [*Cited and annotated* in 22 L. R. A. 383, on constitutionality of statute legalizing invalid private contracts; in 31 L. R. A. (N. S.) 1077, 1080, on constitutionality of statutes curing defective acknowledgments of conveyances; in 41 L. R. A. (N. S.) 1175, on impeachment of certificate of acknowledgment.]

(c) The private curative act of 1787, remedying defects or informalities in the language of a deed, made by one R. and wife to his use, and in the mode of acknowledging it, was constitutional.—*Dulany v. Tilghman*, 6 G. & J. 461. [*Cited and annotated* in 22 L. R. A. 381, on constitutionality of statute legalizing invalid private contract.]

(d) An acknowledgment of a deed by a feme covert, made in 1796, without the word "fear," or any other equivalent word, was held to be defective under the act of 1715, prescribing the mode of executing and acknowledging deeds, but cured by act Nov., 1807, c. 52, it appearing by the certificate that the feme made her acknowledgment privately and willingly, out of the presence and hearing of her husband.—*Hollingsworth v. M'Donald*, 2 H. & J. 230, 3 Am. Dec. 545.

#### § 48. Liability of officer defectively or falsely certifying acknowledgment.

##### *Cross-Reference.*

Liability on official bond, see "Justices of the Peace," § 29; "Notaries," § 11.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### III. OPERATION AND EFFECT.

##### *Cross-References.*

Presumption of delivery or of time of delivery from acknowledgment, see "Deeds," § 194.

Right to contest validity of unacknowledged lease, see "Landlord and Tenant," § 35.

#### § 49. Construction and operation of certificate in general.

##### *Cross-Reference.*

Acknowledgment of incomplete instrument, see ante, § 7.

(a) When a deed is attacked for want of definiteness in the certificate of acknowledgment required by Code, art. 21, § 8, the court may refer to any portion of the deed, including the certificate of the clerk and the indorsement of the recording officer.—*Kelly v. Rosenstock*, 45 Md. 389.

(b) A citizen of Virginia having personal property in Maryland, and being temporarily there, may execute a conveyance of such property in the county where it is at the time, and such deed, acknowledged and recorded agreeably to the laws of Maryland, is valid as against an attaching creditor of the vendor.—*Fouke v. Fleming*, 13 Md. 392.

(c) A conveyance by a married woman under a privy examination, as provided by act 1776, c. 14, estopped her as effectually as if she were unmarried.—*Morris v. Harris*, 9 Gill 19.

(d) The acknowledgment by a wife of a lease for years, made by a husband only, operates to bar her dower during the lease.—*Chase's Case*, 1 Bland 206, 17 Am. Dec. 277. [*Cited and annotated* in 21 L. R. A. 183, on right to mesne profits or damages for detention of dower.]

(e) A deed made in 1683 by T. W., and acknowledged by T. W. and J. W., his wife, in open court, the said wife being first privately examined as the law required, was inoperative to pass the fee, the wife not being a grantor in the deed.—*Hawkins v. Gould*, 3 H. & J. 243.

#### § 50. Surplusage in certificate.

#### § 51. Unnecessary acknowledgments.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 52. Authenticity of instrument in general.

(a) The certificate of a justice of the peace of the execution and acknowledgment of a power of attorney is not evidence per se of the facts certified. The magistrate or one of the subscribing witnesses should be

called and examined to prove the identity of the person and the execution of the instrument.—*Eichelberger v. Sifford*, 27 Md. 320. [*Cited and annotated* in 22 L. R. A. 373, on signature by mark; in 35 L. R. A. 321, 322, 341, 350, on necessity for calling subscribing witnesses to prove attested instruments.]

(b) The acknowledgment and recording of a deed import delivery, and are prima facie evidence of all circumstances necessary to give it validity.—*Hutchins v. Dixon*, 11 Md. 29.

(c) A copy of the record of a deed of real and personal property which appeared to have been acknowledged before a justice of the provincial court who was competent to take acknowledgements, and who had authority to record the deed, is evidence of such acknowledgment, and the acknowledgment is evidence of the execution.—*Gassaway v. Dorsey*, 4 H. & McH. 405.

### § 53. Admissibility of instrument to record.

#### Cross-References.

Acknowledgment before notary of another state, see post, § 57.

Defectively acknowledged instruments, see ante, § 6.

Specific defects which render instrument unrecordable, see ante, § 36.

Defect in record of acknowledgment, as affecting subsequent purchaser, see "Vendor and Purchaser," § 231.

Effect of actual record on subsequent purchasers, see "Vendor and Purchaser," § 231.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 54. Admissibility of instrument in evidence.

#### Cross-References.

Acknowledgment before notary of another state, see post, § 57.

Defectively acknowledged instruments, see ante, § 6.

Unacknowledged instruments, see ante, § 5.

Ancient documents, see "Evidence," § 372.

(a) The certificate of a justice of the peace of the execution and acknowledgment of a power of attorney is not evidence per se of the facts certified.—*Eichelberger v. Sifford*, 27 Md. 320.

(b) Official copies of instruments made evidence by statute are prima facie evidence of all that is necessary to authorize their registration, when it appears that they have been duly recorded.—*McCauley v. State*, 21 Md. 556.

(c) Under an act declaring that possession by the grantee, his heirs or assigns, with notice to a subsequent purchaser of his claim, shall give effect to an unrecorded deed, the admissibility in evidence of such unrecorded deed depends on the sufficiency of the evidence offered to satisfy the requirements of the act as to notice and possession.—*Bryan's Lessee v. Harvey*, 18 Md. 113.

(d) A deed of land in another state will not be evidence if its acknowledgment is defective by the laws of this state, unless it is shown to be sufficient in the state in which the land is situated.—*Haney v. Marshall*, 9 Md. 194.

(e) A deed of land executed in 1735, to be competent evidence, should appear to have been recorded according to the provisions of act 1715.—*Mundell v. Perry*, 2 G. & J. 193.

(f) In ejectment, a deed of lease and release offered by plaintiff, bearing date the 1st and 2d of May, 1759, acknowledged on the 2d day of May, and recorded on the 7th day of May, 1759, are admissible without proof of execution.—*Brown v. Lynch*, 1 H. & McH. 218.

### § 55. Conclusiveness of certificate.

(a) Parol evidence is admissible to prove that the acknowledgment of a deed was procured by fraud.—*Davis v. Hamblin*, 51 Md. 525. [*Cited and annotated* in 41 L. R. A. (N. S.) 1173, on impeachment of certificate of acknowledgment.]

(b) Under act 1830, c. 164, which provided for the certification of an examination of a married woman apart from her husband at the time of her acknowledgment of a deed by both of them, a wife who was compelled by duress to execute such a deed is not thereby estopped to assert such duress in an action at law looking to an enforcement of the instrument.—*Central*

*Bank v. Copeland*, 18 Md. 305, 81 Am. Dec. 597. [*Cited and annotated* in 41 L. R. A. (N. S.) 1169, 1181, on impeachment of certificate of acknowledgment.]

(c) A justice of the peace should not be allowed to contradict or impeach the acknowledgment of a deed taken by him in pursuance of the requirements of law.—*Central Bank v. Copeland*, 18 Md. 305, 81 Am. Dec. 597. [*Cited and annotated* in 41 L. R. A. (N. S.) 1169, 1181, on impeachment of certificate of acknowledgment.]

(d) The acknowledgment annexed to a deed, that it was the free and voluntary act of the grantor, is not conclusive of the fact, but may be disproved by proper evidence, when the grantor seeks to avoid the deed on the ground of fraud, force, or intimidation.—*Central Bank v. Copeland*, 18 Md. 305, 81 Am. Dec. 597. [*Cited and annotated* in 41 L. R. A. (N. S.) 1169, 1181, on impeachment of certificate of acknowledgment.]

(e) Where it appears by the certificate on a deed made in the usual form that the party on a particular day came before two justices of the peace of the county, and acknowledged the instrument to be his free act and deed, parol evidence is not admissible to prove that the said justices separately took the said acknowledgment at different times or places within the said county.—*Ridgely v. Howard*, 8 H. & McH. 321.

(f) Parol evidence is not admissible to contradict the certificate of acknowledgment in a deed.—*Bissett v. Bissett*, 1 H. & McH. 211, note. [*Cited and annotated* in 41 L. R. A. (N. S.) 1169, on impeachment of certificate of acknowledgment.]

#### § 56. Grounds of impeaching or contradicting certificate.

##### *Cross-References.*

Evidence to impeach or contradict, see post, § 62.

See also § 55, ante.

##### *Annotation.*

Impeachment of certificate of acknowledgment.—41 L. R. A. (N. S.) 1161, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 57. Acknowledgment under laws of other state or foreign country.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### IV. PLEADING AND EVIDENCE.

#### § 58. Pleading.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 59. Presumptions and burden of proof.

##### *Cross-Reference.*

Presumption as to acknowledgment taken in another state, see ante, § 57.

(a) Where a deed is executed and acknowledged by parties living in different counties and on different days, the presumption arising from its date, that it was delivered on that day, cannot stand against the positive averment in the acknowledgment that it was executed afterwards.—*Henderson v. City of Baltimore*, 8 Md. 352.

(b) The acknowledgment of a deed or receipt is prima facie evidence that the party resided in the county in which it was taken and certified.—*Warner v. Hardy*, 6 Md. 525. [*Cited and annotated* in 19 L. R. A. (N. S.) 488, on admissibility of record, or copy of record, to prove deed under which party offering it claims.]

(c) The date of the certificate of the acknowledgment of a deed is prima facie evidence that it was acknowledged on that date.—*Barry v. Hoffman*, 6 Md. 78.

(d) The acknowledgment and recording of a deed warrants the presumption of a legal delivery.—*Stewart v. Redditt*, 3 Md. 67.

(e) Where representatives of a deceased person made acknowledgments of receipts to an executor for their portion of testator's estate before a justice of the peace, in the absence of proof of actual residence elsewhere, they will be presumed to reside in the county where the acknowledgment was taken.—*Carroll v. Tyler*, 2 H. & G. 54.

(f) Where a written instrument is required by law to be recorded, its enrollment

is prima facie evidence of its validity.—*Craufurd v. State*, 6 H. & J. 231.

(g) Where a deed is recorded within the time prescribed, and the year when it was acknowledged is omitted in the acknowledgment, the legal inference is that it was legally acknowledged.—*Wickes v. Caulk*, 5 H. & J. 36.

(h) In an action of ejectment, defendant offered in evidence a deed dated October 6, 1707, which was certified as having been acknowledged October 6th, the year being omitted. The plaintiff objected to the evidence on that ground. *Held*, that as it appeared that both the deed and the acknowledgment were recorded within the time prescribed by law, and it could not have been recorded within due time if not properly acknowledged, it would be presumed that the acknowledgment was made in due time.—*Wickes v. Caulk*, 5 H. & J. 36. [*Cited and annotated* in 32 L. R. A. (N. S.) 285, on alteration of deed after delivery; in 39 L. R. A. (N. S.) 105, on presumption as to time of alteration in instrument and its effect on burden of proof.]

### § 60. Evidence of fact of acknowledgment.

#### *Cross-Reference.*

Certificate as proof of authenticity, see ante, § 52.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 61. Evidence to aid certificate.

#### *Cross-Reference.*

Further certificate of authenticity and conformity to law, see ante, § 39.

(a) Under the act 1729, ch. 8, § 5, a certificate of acknowledgment of a deed of sale of personal property was not required to state the authority of the justice; this could be shown by other evidence.—*Byer v. Etnyre*, 2 Gill 150, 41 Am. Dec. 410. [See Code, art. 21, §§ 4, *et seq.*]

(b) Parol evidence is admissible to show that a grantor, although stated in the deed to reside in a particular county, was resident of the county in which the deed was acknowledged.—*Gittings v. Hall*, 1 H. & J. 14, 2 Am. Dec. 502.

### § 62. Evidence to impeach or contradict certificate.

#### *Cross-Reference.*

Conclusiveness of certificate, see ante, § 55.

#### *Annotation.*

Sufficiency of evidence to impeach certificate.—6 L. R. A. (N. S.) 442, note.

Degree of proof required.—41 L. R. A. (N. S.) 1176, note.

(a) Evidence by a justice of the peace that he took the acknowledgment of a certain mortgage is more worthy of credit than that of the maker of the mortgage seeking to repudiate the debt on the ground that the acknowledgment was not taken as testified to by the justice.—*Ramsburg v. Campbell*, 55 Md. 227. [*Cited and annotated* in 41 L. R. A. (N. S.) 1178, 1180, on impeachment of certificate of acknowledgment.]

(b) Where a certificate of acknowledgment states that the grantor acknowledged the instrument before two justices of the peace on a particular day, parol evidence is inadmissible to show that the acknowledgment was taken by the justices separately, on different days, and at different places within the county.—*Ridgely v. Howard*, 8 H. & McH. 321.

## ACQUIESCENCE.

#### *Cross-References.*

Affecting right to object to municipal assessment, see "Municipal Corporations," § 488.

As admission, see "Criminal Law," § 407; "Evidence," § 220.

Definition, see "Trial," § 232.

Estoppel to appeal or take other proceeding for review, see "Appeal and Error," § 154.

Ground of estoppel in pais, see "Estoppel," §§ 90-94.

In invalid drainage proceedings, see "Drains," § 53.

In location of boundary lines, see "Boundaries," § 48.

In public use of property, see "Dedication," § 20.

Of owner of property in appropriation for public use, see "Eminent Domain," § 280.

Ratification of acts of agent, see "Principal and Agent," § 170.

#### *Annotation.*

1 Words and Phrases, 110-112.

## ACQUITTAL.

#### *Cross-References.*

As evidence of want of probable cause, see "Malicious Prosecution," § 24.

In proceeding in which perjury was committed as bar to prosecution for perjury, see "Perjury," § 15.  
 Of accused as bar to subsequent prosecution, see "Criminal Law," § 186.  
 Operation and effect as adjudication, see "Judgment," § 751.

*Annotation.*

1 Words and Phrases, 114, 115.

**ACQUITTANCE.**

*Cross-Reference.*

See "Payment"; "Release."

*Annotation.*

1 Words and Phrases, 115.

**ACTING MAYOR.**

*Cross-Reference.*

See Municipal Corporations, § 107.

**ACTION.**

*Scope-Note.*

[INCLUDES nature, grounds, and incidents of civil actions in general; what constitutes causes of action and defenses in general; who are entitled to sue and to defend; distinction between civil and criminal remedies and legal and equitable remedies, between actions on contract and actions of tort, and between particular forms of actions; cumulative and exclusive remedies; joinder and splitting of causes of action, and consolidation and severance of actions; demand or notice before suit, leave to sue, and other conditions precedent; and commencement, prosecution, and termination of actions in general, and stay of proceedings therein.

[EXCLUDES actions by or against particular classes of persons (see "*Aliens*"; "*Infants*"; and other specific heads); partners (see "*Partnership*"); unincorporated associations and companies (see "*Associations*"; "*Joint-Stock Companies*"); corporations (see "*Corporations*"); governments (see "*United States*"; "*States*"; "*Territories*"); and other political or municipal bodies or officers (see "*Municipal Corporations*"; "*Counties*"; "*Towns*"; "*Schools and School Districts*"; "*Officers*"); also actions between, by, or against persons in particular personal relations (see "*Husband and Wife*"; "*Executors and Administrators*"; "*Master and Servant*"; and other specific heads); actions incident to particular occupations or transactions (see "*Banks and Banking*"; "*Insurance*"; "*Carriers*"; "*Railroads*"; "*Shipping*"; and other specific heads); actions involving or affecting particular kinds of property (see "*Mines and Minerals*"; "*Waters and Water Courses*"; "*Easements*"; "*Patents*"; and other specific heads); actions for breach of contract (see "*Contracts*"; "*Bonds*"; "*Bills and Notes*"; and other specific heads); actions for injuries to person or property (see "*Torts*"; and titles of particular wrongs); penal actions (see "*Penalties*"); particular forms of action (see specific heads); action for particular forms of relief (see "*Divorce*"; "*Ejectment*"; "*Replevin*"; "*Specific Performance*"; and other specific heads); suits in equity (see "*Equity*"); or admiralty (see "*Admiralty*"), and proceedings for probate or contest of wills (see "*Wills*"), and proceedings under insolvent laws (see "*Insolvency*") or bankrupt laws (see "*Bankruptcy*"); election between actions (see "*Election of Remedies*"); time limited for commencement of actions (see "*Limitation of Actions*"), and place for bringing or trial of actions (see "*Venue*"); necessary or proper parties to actions (see "*Parties*"), service of process (see "*Process*"), appearance (see "*Appearance*"), and other proceedings in actions (see "*Pleading*"; "*Motions*"; "*Trial*"; "*Judgment*"; "*Costs*"; and other specific heads); particular provisional or extraordinary remedies in actions (see "*Arrest*"; "*Attachment*"; "*Injunction*"; "*Receivers*"; and other specific heads); particular remedies for correction of errors and review of decisions (see "*Exceptions, Bill of*"; "*New Trial*"; "*Appeal and Error*"; and other specific heads); effect of pendency of action (see "*Lis Pendens*"; "*Abatement and Revival*"); and submission of controversies, without action, to courts (see "*Submission of Controversy*") or to arbitrators (see "*Arbitration and Award*"). For complete list of matters excluded, see cross references, post.]

## ACTION.

*Analysis.***I. Grounds and Conditions Precedent.**

- § 1. Nature and elements of cause of action.
- § 2. Acts or omissions constituting causes of action in general.
- § 3. Statutory rights of action.
- § 4. Illegal or immoral transactions.
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- § 6. Actions for declarations of rights without other relief.
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**III. Joinder, Splitting, Consolidation, and Severance.**

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### III. Joinder, Splitting, Consolidation, and Severance—Continued.

- § 45. — Nature and grounds of action in general.
- § 46. — Legal and equitable.
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- § 52. Joinder of causes of action under civil law.
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### IV. Commencement, Prosecution, and Termination.

- § 61. Accrual of cause of action.
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- § 70. Abandonment.
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### *Cross-References.*

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| <p>Abatement, see "Abatement and Revival."</p> <p>Accrual, as affecting limitations, see "Limitation of Actions," §§ 43-64.</p> <p>Assent to or participation in judicial proceedings as ground of estoppel in pais, see "Estoppel," § 91.</p> <p>Assignment of choses in action, see "Assignments," §§ 22-27.</p> <p>Bar by award of arbitrators, see "Arbitration and Award," § 81.</p> <p>Bar by former adjudication, see "Judgment," §§ 540-633.</p> <p>Claim or position in judicial proceedings as ground of estoppel in pais, see "Estoppel," § 68.</p> <p>Concealment of cause of action as affecting limitation, see "Limitation of Actions," § 104.</p> <p>Conduct of litigation by attorney, see "Attorney and Client," §§ 88-96.</p> <p>Conduct of litigation by officer or agent of corporation, see "Corporations," § 419.</p> <p>Constitutional guaranties of remedies, see "Constitutional Law," § 321.</p> | <p>Constitutional guaranty against denial of equal protection of laws, regulation of remedies, see "Constitutional Law," § 249.</p> <p>Constitutional guaranty against impairment of obligation of contracts, withdrawal or change of remedies, see "Constitutional Law," §§ 168, 169.</p> <p>Constitutional guaranty of due process of law, regulation of remedies, see "Constitutional Law," §§ 304-317.</p> <p>Constitutional protection of rights of action as vested rights, see "Constitutional Law," § 105.</p> <p>Construction of statutes relating to remedies and procedure, see "Statutes," §§ 243, 244.</p> <p>Damages recoverable, see "Damages."</p> <p>Direction in equity of action at law, see "Equity," § 383.</p> <p>Effect of agreement to arbitrate, see "Arbitration and Award," §§ 10, 21.</p> <p>Effect of conviction of crime on pending civil action, see "Convicts," § 6.</p> |
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Effect on pending actions of assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 189.

Election of remedy, see "Election of Remedies."

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Judicial proceedings on holidays, see "Holidays," § 5.

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Leave to sue on administration bond, see "Executors and Administrators," § 537.

Liability of county for expenses connected with trial of civil proceedings, see "Counties," § 138.

Liability of municipal corporations for expenses connected with trial of civil proceedings, see "Municipal Corporations," §§ 262, 263.

Limitation by statutes, see "Limitation of Actions."

Malicious actions, see "Malicious Prosecution."

Nonpayment of costs as defense to subsequent action, see "Costs," § 278.

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Pendency of action as affecting limitation of other action, see "Limitation of Actions," § 105.

Pendency of litigation as suspending running of interest, see "Interest," § 51.

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Practice in respect to plea by carrier of limitation of liability, see "Carriers," §§ 162-168.

Regulation of civil remedies and proceedings by special or local law, see "Statutes," § 85.

Resort to or conduct of legal remedy as tort, see "Torts," § 14.

Restraining action at law, see "Injunction," §§ 25-33.

Retroactive operation of statutes relating to remedies and procedure, see "Constitutional Law," § 191; "Statutes," § 267.

Rights of receivers as to pending actions, see "Receivers," § 80.

Right to trial by jury, see "Jury," §§ 9-37.

Subject and titles of acts relating to civil remedies and procedure, see "Statutes," § 117.

Submission of controversy to court without action, see "Submission of Controversy."

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*Actions between parties in particular relations.*

See "Attorney and Client," §§ 128, 158-170; "Brokers," § 11; "Guardian and Ward," § 117; "Husband and Wife," §§ 205, 272, 281, 285½-301; "Landlord and Tenant," §§ 48, 49, 129, 130, 132, 133, 134, 139, 142, 148, 154, 157, 159, 160, 161, 169, 179, 180, 217-238, 257-262, 270, 274, 278, 280-292, 294-318, 331; "Master and Servant," §§ 35-46, 65, 80, 81, 250-299; "Parent and Child," § 11; "Partnership," §§ 102-124, 313-348; "Principal and Agent," §§ 78, 79, 89; "Principal and Surety," § 190.

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Co-executors or co-administrators, see "Executors and Administrators," § 424.

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Corporate officers or agents and stockholders, see "Corporations," § 320.

Corporation and corporate officers or agents, see "Corporations," § 319.

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Co-sureties, see "Principal and Surety," § 200.

Co-tenants, see "Joint Tenancy," § 10; "Partition," § 10; "Tenancy in Common," §§ 28, 38.

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Mortgagor and mortgagee, see "Chattel Mortgages," §§ 172, 176, 228, 269-291; "Mortgages," §§ 213, 216, 311, 312, 380-590, 611-623.

Mortgagor and purchaser or grantee of mortgaged property, see "Mortgages," § 284.

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Parties to fraudulent conveyances, see "Fraudulent Conveyances," § 188.

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Pledgor and pledgee, see "Pledges," §§ 33, 36.

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*Actions by or against particular classes of persons.*

See "Absentees," § 7; "Adjoining Landowners," §§ 4, 9; "Aliens," § 16; "Associations," §§ 20, 26; "Asylums," § 8; "Attorney and Client," § 126; "Attorney General," § 9; "Banks and Banking," §§ 143, 212; "Beneficial Associations," § 20; "Brokers," §§ 11, 37, 38, 76, 106; "Building and Loan Associations," §§ 39, 41, 46; "Carriers," §§ 45, 69, 76, 94, 102-106, 126-137, 146, 181, 196, 196½, 201, 202, 221-231, 274-279, 311-322, 376-386, 408, 415, 417; "Clerks of Courts," §§ 37, 62, 72, 75; "Clubs," § 12; "Colleges and Universities," § 10; "Convicts," § 6; "Corporations," §§ 90, 98, 133, 155, 169, 189, 308, 319, 499-525, 569, 580, 591, 609, 610, 612-615, 630, 661, 664-677½; "Counties," §§ 129, 170, 188, 194, 196, 208-228; "Depositories," §§ 11, 14; "District of Columbia," § 36; "Druggists," §§ 10, 11; "Drunkards," § 8; "Exchanges," § 14; "Executors and Administrators," §§ 420-457, 473, 474; "Factors," §§ 7, 42, 43, 45, 46, 66; "Guardian and Ward," §§ 116-136, 146; "Husband and Wife," §§ 6, 95, 203-244, 270, 271, 273, 274, 322-337; "Indians," § 27; "Infants," §§ 70-116; "Innkeepers," §§ 9, 10, 11, 12; "Insane Persons," § 42, 87-103; "Joint-Stock Companies," § 19; "Judges," §§ 35-37; "Justices of the Peace," §§ 18, 28, 29; "Landlord and Tenant," §§ 48, 49, 54, 129, 130, 132, 133, 134, 139, 142, 148, 154, 157, 159, 160, 161, 169, 170, 179, 180, 217-238, 249, 251, 252, 257-262, 270, 274, 278, 280-292, 294-318, 331, 332; "Livery Stable Keepers," §§ 7, 8, 11, 12; "Master and Servant," §§ 325-335; "Municipal Corporations," §§ 402, 404, 742, 811-826, 845, 857, 905, 955, 978, 987-1000, 1016-1040; "Notaries," § 11; "Officers," §§ 119, 134-143; "Parent and Child," §§ 3, 4, 13; "Partnership," §§ 191-223, 242, 375; "Pawnbrokers," § 9; "Physicians and Surgeons," §§ 6, 11, 18, 24; "Principal and Agent," §§ 78, 79, 89, 183-199; "Railroads," §§ 21, 29, 114, 177-202, 219, 221, 222, 282, 297, 342-353, 394-403, 434-452, 472-488; "Receivers," §§ 164-189, 210, 220; "Registers of Deeds," §§ 6, 7; "Religious Societies," §§ 25, 27, 31; "Schools and School Districts," §§ 7, 8, 41, 95, 97, 106, 107, 111, 114-126, 138, 142, 145; "Seamen," § 26; "Sheriffs and Constables," §§ 74, 127-143; "Slaves," §§ 17, 21; "Spendthrifts," § 9; "States," §§ 168, 168½, 190-215; "Street Railroads," §§ 57, 61, 107½-120; "Telegraphs and Telephones," §§ 20, 28, 30, 34, 40, 45; "Territories," § 32; "Theaters and Shows," § 6; "Towns," §§ 61, 64-84; "Trade Unions," § 9; "United States," §§ 124-147; "United States Marshals," §§ 27, 34, 36; "Warehousemen," §§ 33, 34.

Adjoining landowners, see "Adjoining Landowners," §§ 4, 9; "Party Walls," § 10.

Agisters, see "Animals," § 23.

Agricultural societies, see "Agriculture," §§ 4, 5.

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Assignees for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 268-282; "Corporations," § 550.

Assignees of mortgage or debt secured thereby, see "Chattel Mortgages," § 213; "Mortgages," § 265.

Assignees or trustees in insolvency, see "Insolvency," §§ 90-103.

Assignor for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 191-194, 357-363.

Attorneys, see "Attorney and Client," §§ 158-170.

Auctioneers, see "Auctions and Auctioneers," §§ 9, 11.

Bailor or bailee, see "Bailment," § 35.

Bankrupts, see "Bankruptcy," §§ 390, 391.

Banks, see "Banks and Banking," §§ 70, 154, 155, 175, 187, 213-231, 270, 278-280½, 306.

Banks, authority of officers and agents, see "Banks and Banking," § 110.

Board of pharmacy, see "Druggists," § 3.

Boards of health, see "Health," § 19.

Bridge companies, see "Bridges," § 46.

Buyers of goods, see "Sales," § 233.

Canal companies, see "Canals," § 11.

Consolidated corporations, see "Corporations," § 591.

Consolidated railroad companies, see "Railroads," § 144.

Contractors for improvements, see "Mechanics' Liens," § 317.

Contractors with states and their sureties, see "States," § 108.

Contractors with United States and their sureties, see "United States," §§ 67, 74.

Co-tenants, see "Joint Tenancy," § 14; "Tenancy in Common," § 55.

County superintendent of schools, see "Schools and School Districts," § 48.

Creditors of assignor for benefit of creditors, see "Assignments for Benefit of Creditors," § 295.

Creditors of devisees or legatees, see "Wills," § 872.

Creditors of heirs or distributees, see "Descent and Distribution," § 157.

Devisees or legatees, see "Wills," §§ 746-749, 847, 872.

Dissolved corporation, see "Corporations," § 630.

Drainage districts, see "Drains," § 20.

Election officers, see "Elections," § 58.

Electric light or power companies, see "Electricity," § 19.

Executors de son tort, see "Executors and Administrators," § 544.

Ferry companies, see "Ferries," § 8.

Foreign corporations, see "Corporations," §§ 661, 664-677½.

Foreign executors or administrators, see "Executors and Administrators," §§ 524, 525.

Foreign guardian of lunatic, see "Insane Persons," § 43.

Foreign guardians, see "Guardian and Ward," §§ 170, 171.

- Foreign insurance companies, see "Insurance," § 26.  
 Foreign receivers, see "Receivers," § 210.  
 Forest commission, see "Woods and Forests," § 7.  
 Gas companies, see "Gas," §§ 9, 11, 13, 14½, 20, 22.  
 Guarantors, see "Guaranty," §§ 75-97, 102.  
 Health officers, see "Health," § 19.  
 Heirs or distributees, see "Descent and Distribution," §§ 89-92, 138-151, 157.  
 Highway officers, see "Highways," § 97.  
 Indemnitors, see "Indemnity," §§ 15, 16.  
 Indemnitors of sheriffs and constables, see "Sheriffs and Constables," §§ 127-143.  
 Insolvent corporations, see "Corporations," § 569.  
 Insolvents, see "Insolvency," § 145.  
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 Irrigation districts, see "Waters and Water Courses," § 230.  
 Jailers, see "Prisons," §§ 9-11, 16.  
 Joint adventurers, see "Joint Adventures," § 8.  
 Lessor and lessee of railroad, see "Railroads," § 134.  
 Levee district boards or officers, see "Levees," § 11.  
 License officers, see "Marriage," § 25.  
 Life tenants, see "Life Estates," § 28.  
 Limited partnerships, see "Partnership," § 375.  
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 Municipal officers, see "Municipal Corporations," § 173.  
 National banks, see "Banks and Banking," §§ 278-280½.  
 Officers and agents of banks, see "Banks and Banking," §§ 55, 58, 82, 254.  
 Officers and agents of corporations in general, see "Corporations," §§ 319, 320, 321, 351-367.  
 Partners after dissolution of firm, see "Partnership," § 296.  
 Poor-law officers, see "Paupers," §§ 12, 14.  
 Postmasters, see "Post Office," § 7.  
 Principals or factors, see "Factors," § 66.  
 Prison officers, see "Prisons," §§ 10, 11, 18.  
 Purchasers from devisees or legatees, see "Wills," § 847.  
 Purchasers from heirs or distributees, see "Descent and Distribution," §§ 138-151.  
 Purchasers of land in general, see "Vendor and Purchaser," § 219.  
 Purchasers of mortgaged property, see "Chattel Mortgages," § 229; "Mortgages," § 292.  
 Receiptors of attached property, see "Attachment," § 190.  
 Receiptors of property taken on execution, see "Execution," § 150.  
 Receivers, see "Banks and Banking," §§ 77, 287; "Corporations," §§ 560, 622; "Receivers," § 411.  
 Receivers in supplementary proceedings, see "Execution," § 411.  
 Referees, see "Reference," § 76.  
 Remainderman, see "Remainders," § 17.  
 Reorganized corporations, see "Corporations," § 580.  
 Reversioners, see "Reversions," § 8.  
 Savings banks, see "Banks and Banking," § 306.  
 School officers, see "Schools and School Districts," § 63.  
 Sellers of goods, see "Sales," §§ 110, 225.  
 Shipowners, see "Shipping," §§ 132, 153.  
 State officers, see "States," § 80.  
 Stockholders, see "Banks and Banking," §§ 49, 250; "Corporations," §§ 189, 190, 259-277, 320.  
 Stockholders on behalf of bank, see "Banks and Banking," § 45.  
 Stockholders on behalf of corporation, see "Corporations," §§ 202-214.  
 Subcontractors, laborers, and materialmen on contracts with states, see "States," § 108½.  
 Subscribers to corporate stock, see "Corporations," § 90.  
 Sureties, see "Principal and Surety," §§ 132-166, 172, 190, 200.  
 Sureties of guardian, see "Insane Persons," § 45.  
 Sureties on bail bonds or undertakings, see "Bail," §§ 26-38, 82-95.  
 Sureties on bonds for discharge from prosecution for seduction, see "Seduction," § 54.  
 Sureties on bonds for payment of alimony, see "Divorce," § 272.  
 Sureties on bonds for release of boats from attachment to enforce maritime liens, see "Maritime Liens," § 75.  
 Sureties on bonds for support of illegitimate child, see "Bastards," § 89.  
 Sureties on bonds in detinue, see "Detinue," § 32.  
 Sureties on bonds in proceedings to open or vacate judgment, see "Judgment," § 402.  
 Sureties on bonds in replevin, see "Replevin," §§ 128-135.  
 Sureties on bonds of assignees for benefit of creditors, see "Assignments for Benefit of Creditors," § 415.  
 Sureties on bonds of claimants of property garnished, see "Garnishment," § 247.  
 Sureties on bonds of claimants of property taken on execution, see "Execution," § 210.  
 Sureties on bonds of depositaries, see "Depositaries," § 14.  
 Sureties on bonds of executors or administrators, see "Executors and Administrators," § 537.  
 Sureties on bonds of guardians, see "Guardian and Ward," § 182.  
 Sureties on bonds of liquor dealers, see "Intoxicating Liquors," § 88.  
 Sureties on bonds of public officers, see "Clerks of Courts," § 75; "Counties," § 101; "Depositaries," § 14; "Highways," § 97; "Judges," § 37; "Justices of the Peace," § 29; "Municipal Corporations," § 173; "Notaries," § 11; "Officers," §§ 134-143; "Paupers," § 14; "Prisons," § 11; "Registers of Deeds," § 7; "Schools

and School Districts," § 63; "Sheriffs and Constables," §§ 161-171; "States," § 80; "Taxation," § 570; "Towns," § 33; "United States," § 51; "United States Marshals," § 36.

Sureties on bonds of receivers, see "Receivers," § 218.

Sureties on bonds of trustees, see "Trusts," § 387.

Sureties on bonds or undertakings in attachment, see "Attachment," §§ 342-354.

Sureties on bonds or undertakings in execution, see "Execution," § 155.

Sureties on bonds or undertakings in garnishment, see "Garnishment," § 247.

Sureties on bonds or undertakings in proceedings for injunction, see "Injunction," §§ 243-256.

Sureties on bonds or undertakings on appeal or writ of error, see "Appeal and Error," §§ 1239-1247; "Criminal Law," § 1199; "Justices of the Peace," § 191.

Sureties on bonds or undertakings on arrest or discharge therefrom, see "Execution," § 453.

Sureties on bonds or undertakings on certiorari to review judgment of justice of the peace, see "Justices of the Peace," § 210.

Sureties on bonds or undertakings to secure costs, see "Costs," § 145.

Sureties on bonds to indemnify against mechanics' liens, see "Mechanics' Liens," § 317.

Sureties on bonds to prevent or discharge mechanics' liens, see "Mechanics' Liens," § 228.

Sureties on sequestration bonds, see "Sequestration," § 20.

Surviving partner or representatives of deceased partner, see "Partnership," § 258.

Tax assessors, see "Taxation," § 323.

Tax collectors, see "Taxation," §§ 566, 567, 569, 570.

Taxpayers, see "Counties," § 196; "Municipal Corporations," §§ 987-1000; "Schools and School Districts," § 111; "States," § 168½; "Towns," § 61.

Telegraph or telephone companies, see "Telegraphs and Telephones," §§ 20, 59-78.

Tenant by curtesy, see "Curtesy," § 12.

Town officers, see "Towns," § 33.

Trustees, see "Trusts," §§ 246-269, 305.

Trustees in bankruptcy, see "Bankruptcy," §§ 277-306.

Turnpike and toll road companies, see "Turnpikes and Toll Roads," §§ 7, 21, 25, 26½, 31, 43, 49.

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Vendors of land, see "Vendor and Purchaser," § 219.

Water companies, see "Waters and Water Courses," § 188.

Wharfingers, see "Wharves," §§ 19, 20.

Widow, before assignment of dower, see "Dower," § 56.

*Actions relating to particular species of property or estates.*

See "Annuities," § 6; "Bridges," § 20; "Common Lands," § 16; "Copyrights," § 69; "Dower," §§ 35, 71-81, 84-88, 90, 91,

93-95, 98-101, 105-107, 110-112; "Fixtures," § 35; "Good Will," § 7; "Life Estates," § 28; "Literary Property," § 9; "Lost Instruments," §§ 14-25; "Mines and Minerals," §§ 38, 50, 51, 68, 110, 117, 125; "Party Walls," § 10; "Patents," §§ 219, 280; "Public Lands," § 13; "Trade-Marks and Trade-Names," §§ 79-101; "Turnpikes and Toll Roads," §§ 25, 31; "Waters and Water Courses," §§ 33, 49, 59, 74-77, 84-87, 107, 114, 152, 176-179, 197, 209, 247, 263, 282.

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Bonds of turnpike companies, see "Turnpikes and Toll Roads," § 26½.

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Municipal bonds, see "Municipal Corporations," § 955.

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*Particular causes or grounds of action.*

See "Abortion," § 16; "Account Stated"; "Assault and Battery," §§ 19-46; "Bailment," §§ 25-34; "Bills and Notes," §§ 441-543; "Breach of Marriage Promise," §§ 11-37; "Collision," § 111; "Compositions with Creditors," § 25; "Compromise and Settlement," § 21; "Conspiracy," §§ 15-22; "Customs Duties," § 96; "Death," §§ 7-109; "Extortion," § 11; "False Im-

- imprisonment," §§ 16-42; "Forcible Entry and Detainer," §§ 1-48; "Fraud," §§ 31-67; "Fraudulent Conveyances," §§ 237-328; "Ground Rents," §§ 12, 15; "Insurance," §§ 608-675, 686, 802-834; "Judgment," §§ 900-947; "Libel and Slander," §§ 68-129; "Malicious Prosecution," §§ 38-79; "Money Lent"; "Money Paid"; "Money Received"; "Negligence," §§ 102-143; "New Trial," § 167; "Nuisance," §§ 18-58, 75-88; "Partition," § 10; "Rape," §§ 65-67; "Recognizances," §§ 11, 12; "Rewards," § 15; "Seduction," §§ 1-28; "Subscriptions," § 21; "Threats," § 10; "Torts," §§ 24-30; "Trespass," §§ 16-75; "Use and Occupation"; "Waste," §§ 15-20.
- Abuse of process, see "Process," § 171.
- Alienation of affections of husband or wife, see "Husband and Wife," §§ 322-337.
- Appropriation of property for public use, see "Eminent Domain," §§ 266-316.
- Assessments on members of mutual benefit insurance associations, see "Insurance," § 742.
- Assessments on members of mutual insurance companies, see "Insurance," § 197.
- Award of arbitrators, see "Arbitration and Award," § 85.
- Bail bonds, see "Bail," §§ 26-38, 82-95.
- Banknotes, see "Banks and Banking," § 212.
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- Benefits, see "Beneficial Associations," § 20.
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- Bids at execution sale, see "Execution," § 239.
- Bids at sales on foreclosure of mortgages, see "Mortgages," § 524.
- Bonds and recognizances in detinue, see "Detinue," § 32.
- Bonds and undertakings in attachment, see "Attachment," §§ 342-354.
- Bonds and undertakings in garnishment, see "Garnishment," § 247.
- Bonds and undertakings in proceedings for injunction, see "Injunction," §§ 243-256.
- Bonds and undertakings in replevin, see "Replevin," §§ 128-135.
- Bonds and undertakings in sequestration proceedings, see "Sequestration," § 20.
- Bonds and undertakings on appeal or writ of error, see "Appeal and Error," §§ 1239-1247; "Criminal Law," § 1199; "Justices of the Peace," § 191.
- Bonds and undertakings on arrest or discharge therefrom, see "Arrest," § 56; "Execution," § 453.
- Bonds and undertakings on certiorari to review judgment of justice of the peace, see "Justices of the Peace," § 210.
- Bonds and undertakings to secure costs, see "Costs," § 145.
- Bonds for discharge from prosecution for seduction, see "Seduction," § 54.
- Bonds for payment of alimony, see "Divorce," § 272.
- Bonds for payment of license taxes, see "Licenses," § 26.
- Bonds for release of boats from attachment to enforce maritime liens, see "Maritime Liens," § 75.
- Bonds for support of bastard, see "Bastards," § 89.
- Bonds for support of wife, in proceedings for abandonment, see "Husband and Wife," § 319.
- Bonds in attachment to enforce lien on logs, lumber, mills, or mill products, see "Logs and Logging," § 33.
- Bonds in general, see "Bonds," §§ 114-148.
- Bonds in ne exeat proceedings, see "Ne Exeat," § 14.
- Bonds in proceedings to open or vacate judgment, see "Judgment," § 402.
- Bonds of assignees for benefit of creditors, see "Assignments for Benefit of Creditors," § 415.
- Bonds of auctioneers, see "Auctions and Auctioneers."
- Bonds of claimants of property garnished, see "Garnishment," § 247.
- Bonds of claimants of property taken on execution, see "Execution," § 210.
- Bonds of depositaries, see "Depositaries," § 14.
- Bonds of executors or administrators, see "Executors and Administrators," § 537.
- Bonds of federal contractors, see "United States," § 67.
- Bonds of guardian of lunatic, see "Insane Persons," § 45.
- Bonds of guardians, see "Guardian and Ward," § 182.
- Bonds of indemnity, see "Indemnity," § 15; "Sheriffs and Constables," § 151.
- Bonds of irrigation district, see "Waters and Water Courses," § 230.
- Bonds of liquor dealers, see "Intoxicating Liquors," § 88.
- Bonds of municipal contractors, see "Municipal Corporations," § 348.
- Bonds of pension agents, see "Pensions," § 5.
- Bonds of postmasters, see "Post Office," § 7.
- Bonds of public officers, see "Clerks of Courts," § 75; "Counties," § 101; "Depositaries," § 14; "Highways," § 97; "Judges," § 37; "Justices of the Peace," § 29; "Municipal Corporations," § 173; "Notaries," § 11; "Officers," §§ 134-143; "Paupers," § 14; "Prisons," § 11; "Registers of Deeds," § 7; "Schools and School Districts," § 63; "Sheriffs and Constables," §§ 161-171; "States," § 80; "Taxation," § 570; "Towns," § 38; "United States," § 51; "United States Marshals," § 36.
- Bonds of receivers, see "Receivers," § 218.
- Bonds of trustees, see "Trusts," § 337.
- Bonds of turnpike companies, see "Turnpikes and Toll Roads," § 26½.
- Bonds on issuance of ne exeat in divorce suits, see "Divorce," § 84.
- Bonds to indemnify against mechanics' liens, see "Mechanics' Liens," § 317.
- Bonds to prevent or discharge mechanics' liens, see "Mechanics' Liens," § 228.
- Breach of agreement for lease, see "Landlord and Tenant," § 22.
- Breach of agreement to renew lease, see "Landlord and Tenant," § 83.
- Breach of agreement to repair demised premises, see "Landlord and Tenant," § 154.

- Breach of charter party, see "Shipping," §§ 49, 58.
- Breach of contract, see "Contracts," §§ 324-356.
- Breach of contract by county to purchase turnpike or toll road, see "Turnpikes and Toll Roads," § 25.
- Breach of contract for carriage of goods, see "Carriers," § 69.
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- Breach of contract for exchange of property, see "Exchange of Property," §§ 8, 13.
- Breach of contract for renting on shares, see "Landlord and Tenant," § 331.
- Breach of contract of employment by servant, see "Master and Servant," § 65.
- Breach of contract of employment of broker, see "Brokers," § 11.
- Breach of contract of employment of factor, see "Factors," § 7.
- Breach of contract of indemnity, see "Indemnity," § 15.
- Breach of contract of lease, see "Landlord and Tenant," § 48.
- Breach of contract of sale, see "Sales," §§ 369-389, 404-424; "Vendor and Purchaser," §§ 321-333, 342-355.
- Breach of contract of sale at auction, see "Auctions and Auctioneers," § 8.
- Breach of contract of sale of logs or timber, see "Logs and Logging," §§ 3, 34.
- Breach of contract of towage, see "Towage," § 3.
- Breach of contract relating to water rights, see "Waters and Water Courses," § 158½.
- Breach of contract to accept bill, see "Bills and Notes," § 89.
- Breach of contract to devise or bequeath, see "Wills," § 63.
- Breach of contract to raft, drive, or float logs, see "Logs and Logging," § 15.
- Breach of contract to saw or manufacture logs, see "Logs and Logging," § 21.
- Breach of covenant, see "Covenants," §§ 104-140.
- Breach of covenant by lessee to pay taxes, see "Landlord and Tenant," § 148.
- Breach of covenant for quiet enjoyment, see "Landlord and Tenant," § 130.
- Breach of covenant in indentures or other contract of apprenticeship, see "Apprentices," § 19.
- Breach of covenants and conditions in grant of railroad right of way, see "Railroads," § 72.
- Breach of covenant to return leased premises in good order, see "Landlord and Tenant," § 160.
- Breach of logging contract, see "Logs and Logging," § 8.
- Breach of party wall agreement, see "Party Walls," § 10.
- Breach of promise of marriage, see "Breach of Marriage Promise."
- Breach of warranty of goods sold, see "Sales," §§ 425-449.
- Champerous contracts, see "Champerity and Maintenance," §§ 4, 5, 6, 7.
- Cloud on title, see "Quieting Title."
- Communication of disease to animals, see "Animals," § 33.
- Compensation for driving intermingled or obstructing logs, see "Logs and Logging," § 17.
- Compensation for improvements, see "Trespass to Try Title," § 59.
- Compensation for improvements on leased premises, see "Landlord and Tenant," § 157.
- Compensation for support of insane person, see "Insane Persons," § 58.
- Compensation of agent, see "Principal and Agent," § 89.
- Compensation of attorney, see "Attorney and Client," §§ 158-170.
- Compensation of broker, see "Brokers," §§ 78-90.
- Compensation of corporate officers and agents, see "Corporations," § 308.
- Compensation of court stenographer, see "Courts," § 57.
- Compensation of factor, see "Factors," § 46.
- Compensation of innkeeper, see "Innkeepers," § 12.
- Compensation of physician or surgeon, see "Physicians and Surgeons," § 24.
- Compensation of pilots, see "Pilots," § 12.
- Compensation of policemen, see "Municipal Corporations," § 186.
- Compensation of prosecuting attorney, see "District and Prosecuting Attorneys," § 5.
- Compensation of referees, see "Reference," § 76.
- Compensation of teachers, see "Schools and School Districts," § 145.
- Compensation of witnesses, see "Witnesses," § 34.
- Compensation or fees of public officers, see "Clerks of Courts," §§ 37, 62; "Counties," §§ 75, 79; "Justices of the Peace," § 18; "Municipal Corporations," § 165; "Officers," § 101; "Sheriffs and Constables," § 74; "United States Marshals," § 27.
- Contracts and transactions entered into on Sunday, see "Sunday," §§ 19-24.
- Contracts of employment of teacher, see "Schools and School Districts," § 138.
- Contracts of suretyship, see "Principal and Surety," §§ 132-166.
- Contracts to lease, see "Landlord and Tenant," § 49.
- Conversion, see "Trove and Conversion," §§ 13-72.
- Conversion of logs or lumber, see "Logs and Logging," § 35.
- Conversion of or injury to mortgaged property, see "Chattel Mortgages," §§ 175-178.
- Conversion of or injury to pledged property, see "Pledges," §§ 36, 37.
- Conversion of property by auctioneer, see "Auctions and Auctioneers," § 9.
- Convict bonds, see "Convicts," § 11.
- County bonds and coupons, see "Counties," § 188.
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- Cutting and removing timber on public lands, see "Public Lands," § 13.
- Debt secured by mortgage, see "Mortgages," § 218.

- Debt secured by pledge, see "Pledges," § 55.  
 Debts of intestate, see "Descent and Distribution," §§ 138-151.  
 Debts of testator, see "Wills," § 847.  
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 Deficiency on foreclosure, see "Mortgages," § 375.  
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 Delay in transportation or delivery of goods, see "Carriers," §§ 102-106, 181.  
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 Demurrage, see "Shipping," § 184.  
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 Disturbance of tenant's possession, see "Landlord and Tenant," §§ 132, 133.  
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 Ejection from theater, see "Theaters and Shows," § 4.  
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 Encroachment on adjoining lands, see "Adjoining Landowners," § 9.  
 Enticement of apprentices, see "Apprentices," § 21.  
 Enticement of child from parent, see "Parent and Child," § 18.  
 Escape of prisoners, see "Prisons," § 16.  
 Eviction of tenant, see "Landlord and Tenant," § 180.  
 Excess of charges paid to carrier, see "Carriers," § 202.  
 Expenditures for paupers, see "Paupers," §§ 51, 52.  
 Expulsion of pupils from public schools, see "Schools and School Districts," § 177.  
 Failure of property owner to take bond from principal contractor for protection of subcontractors, see "Mechanics' Liens," § 229.  
 Failure or refusal to furnish gas to private consumers, see "Gas," § 13.  
 Failure or refusal to furnish telegraphic or telephonic service or facilities, see "Telegraphs and Telephones," § 28.  
 Failure to deliver goods stored, see "Warehousemen," § 34.  
 Failure to deliver or misdelivery of goods, see "Carriers," § 94.  
 Failure to deliver possession of leased premises, see "Landlord and Tenant," § 129.  
 Failure to furnish passenger on vessel proper accommodations, see "Shipping," § 164.  
 Failure to furnish transportation, see "Carriers," § 236.  
 Failure to make improvements on demised premises, see "Landlord and Tenant," § 159.  
 Failure to make repairs on leased premises, see "Landlord and Tenant," § 154.  
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 Illegal acts relating to dead bodies, see "Dead Bodies," § 9.  
 Improper use of leased property, see "Landlord and Tenant," § 134.  
 Indemnity of surety by principal, see "Principal and Surety," § 190.  
 Infringement of copyright, see "Copyrights," § 69.  
 Infringement of literary work, see "Literary Property," § 9.  
 Infringement of patent, see "Patents," § 280.  
 Infringement of trade-mark or trade-name, see "Trade-Marks and Trade-Names," §§ 79-101.  
 Injuries at railroad crossings, see "Railroads," §§ 342-353.  
 Injuries by animals, see "Animals," §§ 55, 63, 74, 85.  
 Injuries by or to artificial ponds, reservoirs, channels and dams, see "Waters and Water Courses," §§ 176-179.  
 Injuries by servants, see "Master and Servant," §§ 325-335.  
 Injuries caused by eating impure food, see "Food," § 25.  
 Injuries from accidents to trains, see "Railroads," § 297.  
 Injuries from condition or use of public buildings or other public property, see "Municipal Corporations," § 857.  
 Injuries from construction of waterworks, see "Waters and Water Courses," § 195.  
 Injuries from construction or maintenance of railroad, see "Railroads," § 114.  
 Injuries from construction or maintenance of telegraph or telephone lines, see "Telegraphs and Telephones," § 20.  
 Injuries from defects in demised premises, see "Landlord and Tenant," §§ 169, 170.  
 Injuries from defects or obstructions in bridges, see "Bridges," § 46.  
 Injuries from defects or obstructions in highways, see "Highways," §§ 202-216.  
 Injuries from defects or obstructions in private roads, see "Private Roads," § 12.  
 Injuries from defects or obstructions in sewers, drains, or water courses, see "Municipal Corporations," § 845.  
 Injuries from defects or obstructions in streets, see "Municipal Corporations," §§ 811-826.  
 Injuries from defects or obstructions in turnpikes or toll roads, see "Turnpikes and Toll Roads," § 49.  
 Injuries from escape or explosion of gas, see "Gas," § 20.  
 Injuries from failure to operate railroad, see "Railroads," § 221.  
 Injuries from fires caused by operation of railroad, see "Railroads," §§ 472-488.  
 Injuries from flowage, see "Waters and Water Courses," §§ 123-126.  
 Injuries from negligence of agricultural society, see "Agriculture," § 4.  
 Injuries from negligent use of weapons, see "Weapons," § 18.

Injuries from public improvements, see "Municipal Corporations," §§ 402, 404.  
 Injuries from sale of drugs or poisons by druggists, see "Druggists," § 10.  
 Injuries from sale of intoxicating liquors, see "Intoxicating Liquors," §§ 282-324.  
 Injuries from willful or criminal setting out of fire, see "Fires," § 7.  
 Injuries incident to construction or operation of gas works, see "Gas," § 14½.  
 Injuries incident to driving or rafting logs, see "Logs and Logging," § 19.  
 Injuries incident to navigation, see "Canals," § 30.  
 Injuries incident to supply of water to public, see "Waters and Water Courses," § 209.  
 Injuries incident to supply or use of water for irrigation, see "Waters and Water Courses," § 263.  
 Injuries received while violating Sunday laws, see "Sunday," § 27.  
 Injuries to animals on or near railroad tracks, see "Railroads," §§ 434-452.  
 Injuries to bridges, see "Bridges," § 27.  
 Injuries to buildings by removal of lateral support, see "Adjoining Landowners," § 4.  
 Injuries to canals, see "Canals," § 23.  
 Injuries to child, right of action by parent, see "Parent and Child," § 11.  
 Injuries to easements, see "Easements," §§ 63-73.  
 Injuries to guests at hotel, see "Innkeepers," § 10.  
 Injuries to leased premises by third persons, see "Landlord and Tenant," § 142.  
 Injuries to licensees or trespassers on railroad property in general, see "Railroads," § 282.  
 Injuries to mortgaged property, see "Mortgages," §§ 216, 217.  
 Injuries to or destruction of logs or rafts, see "Logs and Logging," § 19.  
 Injuries to passengers, see "Carriers," §§ 311-322; "Shipping," § 166.  
 Injuries to passengers in palace or sleeping car, see "Carriers," § 416.  
 Injuries to persons attending theaters or other places of public amusement, see "Theaters and Shows," § 6.  
 Injuries to persons hiring horses from liverymen, see "Livery Stable Keepers," § 11.  
 Injuries to persons on or near railroad tracks, see "Railroads," §§ 394-403.  
 Injuries to persons on or near street railroad tracks, see "Street Railroads," §§ 107½-120.  
 Injuries to real property by operation of mines, see "Mines and Minerals," § 125.  
 Injuries to riparian lands from floatage of rafts and logs, see "Navigable Waters," § 39.  
 Injuries to seamen, see "Seamen," § 29.  
 Injuries to servants, see "Master and Servant," §§ 250-299.  
 Injuries to third persons by tow or tug, see "Towage," § 19.  
 Injuries to vessel at wharf, see "Wharves," § 20.  
 Injuries to wharf, see "Wharves," § 22.  
 Insurance premiums, see "Insurance," § 188.

Interference with party wall, see "Party Walls," § 10.  
 Interference with relation of master and servant, see "Master and Servant," §§ 340, 344.  
 Judgment for alimony, see "Divorce," § 271.  
 Labor and materials furnished in working mines, see "Mines and Minerals," § 110.  
 Liabilities of counties on change of boundaries, see "Counties," § 16.  
 Liability of bank officers, see "Banks and Banking," §§ 55, 58, 254.  
 Liability of officers and agents of corporations in general, see "Corporations," §§ 351-367.  
 Liability of parent for torts of child, see "Parent and Child," § 13.  
 Liability of stockholders, see "Banks and Banking," §§ 49, 250; "Corporations," §§ 259-277.  
 Liability on insolvency of bank, see "Banks and Banking," § 82.  
 Liquor nuisance, see "Intoxicating Liquors," §§ 269-281.  
 Loans or discounts by banks, see "Banks and Banking," § 187.  
 Loss of or injuries to hired horses or vehicles, see "Livery Stable Keepers," § 12.  
 Loss of or injuries to horses or vehicles in care of liverymen, see "Livery Stable Keepers," § 7.  
 Loss of or injuries to logs, see "Logs and Logging," § 20.  
 Loss of or injury to animals in care of agister, see "Animals," § 23.  
 Loss of or injury to goods in course of transportation, see "Carriers," §§ 126-137, 181½-187; "Shipping," § 132.  
 Loss of or injury to goods stored, see "Warehousemen," § 34.  
 Loss of or injury to goods stored with carrier, see "Carriers," § 146.  
 Loss of or injury to live stock in course of transportation, see "Carriers," §§ 221-231.  
 Loss of or injury to passenger's baggage, see "Carriers," §§ 408, 417.  
 Loss of or injury to property of guest, see "Innkeepers," § 11.  
 Loss of or injury to tow, see "Towage," § 15.  
 Loss of passenger's effects, see "Shipping," § 167.  
 Loss of services by interference with relation of master and servant, see "Master and Servant," § 340.  
 Loss of services of or injuries to child, see "Parent and Child," § 7.  
 Maritime torts, see "Shipping," § 86.  
 Mental suffering, see "Damages," § 49.  
 Mesne profits, see "Ejectment," § 128.  
 Money collected by attorney, see "Attorney and Client," § 128.  
 Municipal bonds, see "Municipal Corporations," § 955.  
 Municipal warrants or certificates of indebtedness, see "Municipal Corporations," § 905.  
 Necessaries furnished child, see "Parent and Child," § 3.  
 Negligence in production or use of electricity, see "Electricity," § 19.



Negligence or default in transmission or delivery of telegraph or telephone message, see "Telegraphs and Telephones," §§ 59-78.

Negligence or default of bank in collection of negotiable paper, see "Banks and Banking," § 175.

Negligence or malpractice of physician or surgeon, see "Physicians and Surgeons," § 18.

Negligence or misconduct of attorney, see "Attorney and Client," § 129.

Negligence or misconduct of broker, see "Brokers," § 38.

Negligence or misconduct of public officers, see "Clerks of Courts," § 72; "Officers," § 119; "Sheriffs and Constables," §§ 127-143; "United States Marshals," § 34.

Negligent operation of ferry, see "Ferries," § 33.

Negligent or wrongful act of agent, see "Principal and Agent," § 79.

Negligent or wrongful act of factor, see "Factors," § 43.

Negligent or wrongful use of highway, see "Highways," § 184.

Negligent or wrongful use of street, see "Municipal Corporations," § 706.

Nonpayment of highway taxes, see "Highways," § 128.

Nonpayment of rent, see "Landlord and Tenant," § 262.

Nonpayment of taxes in general, see "Taxation," §§ 584-598.

Obligations of railroad companies, see "Railroads," § 179.

Obstruction of highway, see "Highways," §§ 160, 161.

Obstruction of license in respect of real property by licensor, see "Licenses," § 55.

Obstruction of navigable stream, see "Navigable Waters," § 26.

Obstruction of private road, see "Private Roads," § 9.

Obstruction of street, see "Municipal Corporations," §§ 698, 699.

Obstruction or detention of water course, see "Waters and Water Courses," §§ 60-63.

Orders of interstate commerce commission, see "Commerce," §§ 91-98.

Owning, keeping or frequenting disorderly house, see "Disorderly House," § 10.

Partition of community, see "Husband and Wife," § 272.

Pollution of water course, see "Waters and Water Courses," §§ 74-77.

Procurement of discharge of servant, see "Master and Servant," § 341.

Purchase money of fertilizer, see "Agriculture," § 7.

Purchase money on sale of goods, see "Sales," §§ 340-368.

Purchase money on sale of land, see "Vendor and Purchaser," §§ 301-320.

Purchase money on sale of liquor, see "Intoxicating Liquors," §§ 329, 330.

Purchase money on sale of logs, see "Logs and Logging," § 34.

Purchase money on sale of property of decedent, see "Executors and Administrators," § 373.

Purchase money on sale of timber, see "Logs and Logging," § 3.

Rebate on surrender of liquor license, see "Intoxicating Liquors," § 97.

Rebates of freight charges, see "Carriers," § 196½.

Recovery for services rendered or expenses incurred under contract with board of health or health officers, see "Health," § 19.

Recovery from railroad company of expenses of constructing fences or private crossings, see "Railroads," § 105.

Recovery of advances or expenses by factor, see "Factors," § 45.

Recovery of assessments paid for public improvements, see "Drains," § 85; "Municipal Corporations," § 523.

Recovery of counsel fees and expenses of wife in divorce suit, see "Divorce," § 198.

Recovery of deposits, see "Banks and Banking," §§ 154, 306.

Recovery of difference in price on resale of goods by seller, see "Sales," § 339.

Recovery of duties paid, see "Customs Duties," §§ 101-119.

Recovery of fine paid, see "Fines," § 19.

Recovery of fines collected, see "Fines," § 20.

Recovery of forfeited deposits appropriated by principal, see "Brokers," § 76.

Recovery of goods by buyer, see "Sales," § 403.

Recovery of goods delivered by seller, or proceeds thereof, see "Sales," §§ 316-331.

Recovery of interest paid, see "Interest," §§ 61-68.

Recovery of license taxes paid, see "Licenses," § 34.

Recovery of mesne profits after judgment for demandant in writ of entry, see "Entry, Writ of," § 24.

Recovery of money or other property from depositaries, see "Depositaries," § 11.

Recovery of payments, see "Payment," § 89.

Recovery of payments of insurance premiums or assessments, see "Insurance," §§ 198, 743.

Recovery of possession by claimant of attached property, see "Attachment," § 300.

Recovery of possession by claimant of property taken on execution, see "Execution," § 186.

Recovery of possession of land by vendor, see "Vendor and Purchaser," § 299.

Recovery of possession of land under water, see "Navigable Waters," § 36.

Recovery of possession of leased mines or mineral lands, see "Mines and Minerals," § 68.

Recovery of possession of leased premises by landlord, see "Landlord and Tenant," §§ 280-292, 294-318.

Recovery of possession of leased premises by tenant, see "Landlord and Tenant," § 179.

Recovery of possession of mines or mineral lands, see "Mines and Minerals," § 50.

Recovery of possession of mortgaged property, see "Chattel Mortgages," §§ 172-174; "Mortgages," §§ 213, 214.

Recovery of possession of property by receiver, see "Receivers," § 72.

Recovery of possession of property seized for taxes, see "Taxation," § 612.

Recovery of possession of property sold on execution, see "Execution," § 280.

Recovery of possession of property sold on foreclosure of mortgage, see "Mortgages," § 544.

Recovery of possession of property subject to ground rent, see "Ground Rents," § 15.

Recovery of possession or proceeds of pledged property, see "Pledges," §§ 33, 34.

Recovery of possession or value of minerals removed from mines, see "Mines and Minerals," § 51.

Recovery of price paid for goods, see "Sales," §§ 390-398.

Recovery of price paid for land, see "Vendor and Purchaser," §§ 334-341.

Recovery of proceeds of goods consigned to factor, see "Factors," § 42.

Recovery of proceeds of sale on foreclosure, see "Mortgages," §§ 376, 568.

Recovery of taxes or purchase money by purchaser of invalid tax title, see "Taxation," §§ 821, 833.

Recovery of tax paid, see "Internal Revenue," § 38; "Municipal Corporations," § 977; "Taxation," §§ 543, 913.

Recovery of unpaid premium offered by agricultural society, see "Agriculture," § 5.

Recovery on subscription, see "Subscriptions," § 21.

Redemption of pledged property, see "Pledges," § 51.

Refusal of admission to theater, see "Theaters and Shows," § 4.

Refusal of board of medical examiners to grant certificate to practice medicine, see "Physicians and Surgeons," § 3.

Refusal of carrier to receive or transport goods, see "Carriers," § 45.

Refusal of employer to give clearance papers to discharged employe, see "Master and Servant," § 33.

Refusal of witness to answer questions on ground of privilege, see "Witnesses," § 309.

Refusal to furnish accommodations at hotel, see "Innkeepers," § 9.

Refusal to pay check, see "Banks and Banking," § 143.

Refusal to transfer stock on corporate books, see "Corporations," § 133.

Relief to claimants of public lands, see "Public Lands," §§ 125-130.

Removal, destruction of, or injury to logs or lumber, on which lien is claimed, see "Logs and Logging," § 31.

Removal of fixtures, see "Fixtures," § 35.

Removal of property subject to landlord's lien, see "Landlord and Tenant," § 251.

Removal or transfer of mortgaged property by mortgagor, see "Chattel Mortgages," §§ 228, 229.

Rent, see "Landlord and Tenant," §§ 217-238.

Rent for water, see "Waters and Water Courses," § 203.

Rent of wharf, see "Wharves," § 9.

Rent or royalties under mining lease, see "Mines and Minerals," §§ 70, 79.

Restitution on reversal, see "Appeal and Error," § 1208.

Right of action pledged, see "Pledges," §§ 30, 58.

Royalties on patented invention, see "Patents," § 219.

School district bonds, see "Schools and School Districts," §§ 41, 97.

School district warrants or orders, see "Schools and School Districts," § 95.

Separation agreements between husband and wife, see "Husband and Wife," § 281.

Services, and materials furnished incident thereto, see "Work and Labor."

Services or wages of child, see "Parent and Child," § 6.

Slander of property or title, see "Libel and Slander," § 139.

State bonds or other securities, see "States," § 168.

Subscriptions to corporate stock, see "Corporations," § 90.

Supplies or services for paupers, see "Paupers," §§ 51-52.

Support of child, see "Parent and Child," § 4.

Support of parent by child, see "Parent and Child," § 4.

Support of prisoners, see "Prisons," § 18.

Tolls for use of turnpike, see "Turnpikes and Toll Roads," § 43.

Torts by municipal corporations, see "Municipal Corporations," § 742.

Torts of child, see "Parent and Child," § 13.

Towage services, see "Towage," § 8.

Trespass by animals, see "Animals," § 100.

Trespass on mines or mining lands, see "Mines and Minerals," § 51.

Tuition of pupil in private school, see "Schools and School Districts," § 8.

Unfair competition in trade, see "Trade-Marks and Trade-Names," §§ 79-101.

Unlawful combinations, see "Monopolies," §§ 24, 28.

Unlawful detainer of demised premises, see "Landlord and Tenant," §§ 287-292.

Use of private road, see "Private Roads," § 11.

Usurious contracts, see "Banks and Banking," § 270; "Usury," §§ 89-125.

Violation of anti-trust laws, see "Monopolies," § 30.

Violation of civil rights laws, see "Civil Rights," §§ 13, 14.

Violation of customs laws, see "Customs Duties," § 129.

Violation of election laws, see "Elections," § 323.

Violation of gaming laws, see "Gaming," § 57.

Violation of health regulations, see "Health," § 38.

Violation of license laws in general, see "Licenses," § 41.

Violation of liquor laws, see "Intoxicating Liquors," §§ 178-195.

Violation of municipal ordinances, see "Municipal Corporations," §§ 633, 645.

Violation of regulations relating to articles of food or drink, see "Food," § 16.

Violation of regulations relating to copyrights, see "Copyrights," § 30.

Violation of regulations relating to druggists, see "Druggists," § 11.  
 Violation of regulations relating to Indians, see "Indians," § 37.  
 Violation of regulations relating to interstate transportation, see "Carriers," § 36.  
 Wages, see "Master and Servant," § 80.  
 Wages of seamen, see "Seamen," § 26.  
 Wharfage, see "Wharves," § 19.  
 Wrongful assessment or collection of license fees or taxes, see "Licenses," § 35.  
 Wrongful attachment, see "Attachment," §§ 368-383.  
 Wrongful cancellation of insurance policy, see "Insurance," § 237.  
 Wrongful conversion of personal property, see "Trover and Conversion," §§ 13-72.  
 Wrongful discharge of servant, see "Master and Servant," §§ 35-46.  
 Wrongful discharge of teacher, see "Schools and School Districts," § 142.  
 Wrongful discharge of teacher in private school, see "Schools and School Districts," § 7.  
 Wrongful distress, see "Landlord and Tenant," § 274.  
 Wrongful enforcement of assessment or tax for public improvement, see "Drains," § 91; "Highways," §§ 129, 148; "Levees," § 29.  
 Wrongful enforcement of taxes in general, see "Municipal Corporations," § 979; "Taxation," § 613.  
 Wrongful execution, see "Execution," §§ 464-474.  
 Wrongful foreclosure by exercise of power of sale in mortgage, see "Mortgages," § 379.  
 Wrongful injunction, see "Injunction," § 261.  
 Wrongful receivership, see "Receivers," § 220.  
 Wrongful recovery of possession of rented premises, see "Landlord and Tenant," § 278.  
 Wrongful searches and seizures, see "Searches and Seizures," § 8.  
 Wrongful sequestration, see "Sequestration," § 21.

*Particular forms of action.*

See "Account, Action on"; "Action on the Case"; "Assumpsit, Action of"; "Covenant, Action of"; "Debt, Action of"; "Detinue"; "Ejectment"; "Entry, Writ of"; "Forcible Entry and Detainer," §§ 1-48; "Quieting Title"; "Real Actions"; "Replevin"; "Trespass," §§ 16-75; "Trespass to Try Title"; "Trover and Conversion." Petitory action, see "Real Actions," §§ 7, 8. Writ of formedon, see "Real Actions," § 4. Writ of right, see "Real Actions," §§ 2, 3.

*Particular forms of special relief.*

See "Account"; "Cancellation of Instruments"; "Creditors' Suit"; "Discovery"; "Divorce"; "Injunction"; "Interpleader"; "Mandamus"; "Marshaling Assets and Securities," § 11; "Pardon," § 7; "Prohibition"; "Quo Warranto"; "Reformation of Instruments"; "Specific Performance"; "Subrogation," § 41. Abatement of liquor nuisance, see "Intoxicating Liquors," §§ 269-281.

Abatement of obstruction on highway, see "Highways," § 158.  
 Abatement of or injunction against nuisance, see "Municipal Corporations," § 623; "Nuisance," §§ 18-40, 75, 77-88.  
 Abatement of tax, see "Taxation," § 499.  
 Abolition and removal of grade crossing of highway and railroad, see "Railroads," § 99.  
 Accounting by agent, see "Principal and Agent," § 78.  
 Accounting by assignee or trustee for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 372, 373, 375, 376.  
 Accounting by assignee or trustee in insolvency, see "Insolvency," § 128.  
 Accounting by brokers, see "Brokers," § 37.  
 Accounting by executor or administrator, see "Executors and Administrators," §§ 468-474, 502-516.  
 Accounting by foreign or ancillary executor or administrator, see "Executors and Administrators," § 526.  
 Accounting by foreign or ancillary guardian, see "Guardian and Ward," § 172.  
 Accounting by foreign or ancillary receiver, see "Receivers," § 211.  
 Accounting by guardian, see "Guardian and Ward," §§ 144-148, 155, 158; "Insane Persons," § 42.  
 Accounting by partners, see "Partnership," §§ 313-348.  
 Accounting by pledgee, see "Pledges," § 51.  
 Accounting by receiver, see "Receivers," §§ 190-204.  
 Accounting by servant, see "Master and Servant," § 81.  
 Accounting by trustee, see "Trusts," §§ 289-333.  
 Accounting by trustee in bankruptcy, see "Bankruptcy," § 366.  
 Adjustment of pre-existing rights and liabilities on alteration of school districts, see "Schools and School Districts," § 41.  
 Admeasurement or assignment of dower, see "Dower," §§ 71-82, 84-88, 90, 91, 93-95, 98-101, 105, 106, 110-112.  
 Administration of charitable trust, see "Charities," § 50.  
 Administration of decedent's estate, see "Executors and Administrators," §§ 473, 474.  
 Aid of attachment, see "Attachment," §§ 223, 224.  
 Alimony, see "Divorce," §§ 199-288.  
 Allotment of homestead, see "Homestead," §§ 49-54, 150, 199-201.  
 Allowance and payment of claims against receivers, see "Receivers," §§ 147-163.  
 Alteration and creation of new counties, see "Counties," § 13.  
 Alteration and creation of new municipalities, see "Municipal Corporations," § 33.  
 Alteration and creation of new school districts, see "Schools and School Districts," §§ 37-39.  
 Alteration and creation of new towns or townships, see "Towns," § 9.  
 Alteration of highway, see "Highways," § 72.  
 Annulment of marriage, see "Marriage," §§ 57-67.

Application for liquor license, see "Intoxicating Liquors," §§ 63-77.

Application for security to keep the peace, see "Breach of the Peace," § 20.

Apportionment, accounting and settlement in respect to taxes collected, see "Taxation," § 916.

Assessment of benefits from public improvements, see "Municipal Corporations," § 454.

Assessment of damages from public improvements, see "Municipal Corporations," § 402.

Bastardy proceedings, see "Bastards," §§ 19-94.

Cancellation of conveyance of married woman's separate property, see "Husband and Wife," § 201.

Cancellation of marriage settlement, see "Husband and Wife," § 34.

Cancellation of mortgage of married woman's separate property, see "Husband and Wife," §§ 169, 171.

Cancellation of patents for public lands, see "Public Lands," §§ 120-122.

Compelling admission of pupils to public schools, see "Schools and School Districts," § 155.

Compelling appraisal and inventory of decedents' estate, see "Executors and Administrators," § 65.

Compelling election under will, see "Wills," § 789.

Compelling erection of partition fence, or contribution therefor, see "Fences," §§ 15, 16.

Compelling issuance of corporate stock, see "Corporations," § 98.

Compelling listing property for taxation, see "Taxation," § 336.

Compelling partial satisfaction of judgment, see "Judgment," § 895.

Compelling railroad companies to operate road, see "Railroads," § 219.

Compelling re-execution of lost instrument, see "Lost Instruments," § 12.

Compelling release or satisfaction of mortgage, see "Mortgages," § 311.

Compelling repair of turnpike, see "Turnpikes and Toll Roads," § 20.

Compelling satisfaction of judgment, see "Judgment," § 894.

Compelling support of paupers, see "Paupers," § 37.

Confirmation of partition, see "Partition," § 9.

Confirmation or revision of assessment for public improvements, see "Municipal Corporations," §§ 497-510.

Confirmation or trial of tax title, see "Taxation," §§ 790-818.

Construction of will, see "Wills," §§ 695-707.

Correction or setting aside of tax assessments, see "Taxation," §§ 480-500.

Determination and establishment of rights in mining locations, see "Mines and Minerals," § 38.

Determination and establishment of rights of mortgagor's creditors, see "Chattel Mortgages," § 201.

Determination as to location and mode of construction of telegraph or telephone lines, see "Telegraphs and Telephones," § 10.

Determination as to necessity, location, and mode of construction of street railroads, see "Street Railroads," §§ 6-12.

Determination as to necessity, place, mode and expenses of crossing highway by railroad, see "Railroads," § 97.

Determination as to necessity, place, mode and expenses of crossing of railroads, see "Railroads," § 91.

Determination, establishment, and protection of water rights, see "Waters and Water Courses," §§ 33, 49, 107, 114, 152.

Determination of adverse claims to real property, see "Quieting Title," §§ 19-25.

Determination of custody of children, see "Parent and Child," § 2.

Determination of existence or location of street, see "Municipal Corporations," § 652.

Determination of location of gas mains, see "Gas," § 9.

Determination of necessity for administration, see "Executors and Administrators," § 3.

Determination of priorities between attachments and other liens or claims, see "Attachment," § 181.

Determination of priorities between judgments and other liens or claims, see "Judgment," § 792.

Determination of priorities between mortgages and other liens or claims, see "Chattel Mortgages," § 157; "Mortgages," § 186.

Determination of reasonableness of license tax on telegraph or telephone companies, see "Licenses," § 7.

Determination of right to office of religious minister, see "Religious Societies," § 27.

Determination of validity of county bonds, see "Counties," § 183.

Determination of validity of municipal ordinances, see "Municipal Corporations," § 121.

Disbarment proceedings, see "Attorney and Client," §§ 48-59.

Disclosure of contents of telegram, see "Telegraphs and Telephones," § 40.

Discovery and valuation of property for taxation, see "Taxation," §§ 372-374.

Discovery of assets of decedent's estate, see "Executors and Administrators," § 85.

Dissolution and accounting of partnership, see "Partnership," §§ 313-348.

Dissolution of attachment, see "Attachment," §§ 225-279.

Dissolution of beneficial associations, see "Beneficial Associations," § 22.

Dissolution of community, see "Husband and Wife," § 272.

Dissolution of drainage districts, see "Drains," § 16.

Dissolution of garnishment, see "Garnishment," §§ 192-199.

Distress for rent, see "Landlord and Tenant," § 270.

Distribution of proceeds of execution sale, see "Execution," § 328.

- Distribution of proceeds of sale on foreclosure of mortgage, see "Mortgages," § 568.
- Election under will, see "Wills," § 788.
- Enforcement against personal property of lien for taxes, see "Taxation," § 599.
- Enforcement of agricultural liens, see "Agriculture," § 15.
- Enforcement of assessments for public improvements, see "Drains," § 90; "Highways," § 147; "Municipal Corporations," §§ 525-588.
- Enforcement of attachment against property not levied on, see "Attachment," §§ 219-222.
- Enforcement of attorney's lien, see "Attorney and Client," § 192.
- Enforcement of charge of legacy on property of estate, see "Wills," § 826.
- Enforcement of charitable trust, see "Charities," § 50.
- Enforcement of claims against exempt property, see "Exemptions," § 78; "Homestead," §§ 107-109.
- Enforcement of claims against married woman's separate estate, see "Husband and Wife," §§ 176-178.
- Enforcement of claims of general creditors on property in hands of receiver, see "Receivers," § 79.
- Enforcement of claim or lien on property assigned for benefit of creditors, see "Assignments for Benefit of Creditors," § 340.
- Enforcement of contract specifying charges for gas, see "Gas," § 14.
- Enforcement of contribution, see "Contribution," § 9.
- Enforcement of contribution among partners, see "Partnership," § 109.
- Enforcement of contribution among sureties, see "Principal and Surety," § 200.
- Enforcement of customs duties, see "Customs Duties," § 96.
- Enforcement of dissolution of bank, see "Banks and Banking," § 70.
- Enforcement of dissolution of corporations in general, see "Corporations," §§ 609, 610, 612-615.
- Enforcement of dissolution of insurance company, see "Insurance," §§ 49, 69.
- Enforcement of dissolution of partnership, see "Partnership," §§ 313-348.
- Enforcement of escheat, see "Escheat," § 6.
- Enforcement of fine, see "Fines," § 7.
- Enforcement of forfeiture for breach of condition in deed, see "Deeds," § 168.
- Enforcement of forfeiture for breach of condition in will, see "Wills," § 667.
- Enforcement of forfeiture for gaming, see "Gaming," § 61.
- Enforcement of forfeiture for nonpayment of taxes, see "Taxation," § 851.
- Enforcement of forfeiture for violation of customs laws, see "Customs Duties," § 133.
- Enforcement of forfeiture for violation of liquor laws, see "Intoxicating Liquors," § 250.
- Enforcement of forfeiture for waste, see "Waste," § 22.
- Enforcement of forfeiture in general, see "Forfeitures," § 5.
- Enforcement of forfeiture of franchise, see "Franchises," § 15.
- Enforcement of forfeiture of mining lease, see "Mines and Minerals," § 78.
- Enforcement of forfeiture of franchise of water company, see "Waters and Water Courses," § 188.
- Enforcement of forfeiture of turnpike or toll road franchise, see "Turnpikes and Toll Roads," § 31.
- Enforcement of judgment, see "Judgment," §§ 855, 856.
- Enforcement of judgment lien, see "Judgment," § 801.
- Enforcement of laborers' liens, see "Master and Servant," § 82.
- Enforcement of landlord's lien, see "Landlord and Tenant," §§ 252, 257-262.
- Enforcement of liabilities against married woman's separate estate, see "Husband and Wife," § 176.
- Enforcement of liability for costs, see "Costs," § 282.
- Enforcement of liability of bank officers, see "Banks and Banking," §§ 55, 58, 254.
- Enforcement of license fees or taxes, see "Gas," § 11; "Intoxicating Liquors," § 94; "Licenses," § 32; "Telegraphs and Telephones," § 30.
- Enforcement of lien as against dower, see "Dower," § 116.
- Enforcement of lien for costs, see "Costs," §§ 283, 325.
- Enforcement of lien for customs duties, see "Customs Duties," § 97.
- Enforcement of lien for fine or costs incurred by violating liquor law, see "Intoxicating Liquors," § 243.
- Enforcement of lien for labor or materials furnished under contract for public improvements, see "Municipal Corporations," § 373.
- Enforcement of lien for price of goods sold, see "Sales," § 315.
- Enforcement of lien for price of land sold, see "Vendor and Purchaser," §§ 269-295.
- Enforcement of lien for taxes or purchase money paid by purchaser of invalid tax title, see "Taxation," § 827.
- Enforcement of liens in general, see "Liens," §§ 18-22.
- Enforcement of lien of corporation on stock or dividends, see "Corporations," § 169.
- Enforcement of lien of liveryman, see "Livery Stable Keepers," § 8.
- Enforcement of lien of purchaser for price paid for land, see "Vendor and Purchaser," § 337.
- Enforcement of lien of warehouseman, see "Warehousemen," § 33.
- Enforcement of lien on logs, lumber, mills, or mill products, see "Logs and Logging," § 33.
- Enforcement of lien on railroad property, see "Railroads," §§ 180, 182-186, 188-192, 194-200.
- Enforcement of maritime liens, see "Maritime Liens," §§ 55-75.
- Enforcement of marriage settlement, see "Husband and Wife," § 35.

- Enforcement of mechanics' liens, see "Mechanics' Liens," §§ 245-311.
- Enforcement of mining liens, see "Mines and Minerals," § 117.
- Enforcement of obligations against property of railroad companies, see "Railroads," §§ 177, 178.
- Enforcement of orders of interstate commerce commission, see "Commerce," §§ 91-98.
- Enforcement of penalties for cutting trees without consent of owner, see "Logs and Logging," § 36.
- Enforcement of penalties for discontinuance of telegraph office, see "Telegraphs and Telephones," § 45.
- Enforcement of penalties for discrimination or overcharge by telegraph or telephone company, see "Telegraphs and Telephones," § 34.
- Enforcement of penalties for failure to produce will for probate, see "Wills," § 211.
- Enforcement of penalties for illegal issue of marriage license, see "Marriage," § 25.
- Enforcement of penalties for practicing medicine without authority, see "Physicians and Surgeons," § 6.
- Enforcement of penalties for refusal or failure to receive or transmit telegrams, see "Telegraphs and Telephones," § 78.
- Enforcement of penalties for violation of fishery laws, see "Fish," § 14.
- Enforcement of penalties for violation of regulations as to payment of wages, see "Master and Servant," § 83.
- Enforcement of penalties for violation of regulations relating to production, supply or use of gas, see "Gas," § 22.
- Enforcement of penalties for violation of regulations relating to railroads, see "Railroads," § 254.
- Enforcement of penalties in general, see "Penalties," §§ 16-41.
- Enforcement of penalty for abandonment of wife by husband, see "Husband and Wife," § 305½.
- Enforcement of penalty for adulteration of articles of commerce, see "Adulteration," § 7.
- Enforcement of penalty for extortion, see "Extortion," § 11.
- Enforcement of penalty for failure to release mortgage, see "Mortgages," § 312.
- Enforcement of penalty for infringement of copyright, see "Copyrights," § 70.
- Enforcement of penalty for interference with relation of master and servant, see "Master and Servant," § 344.
- Enforcement of penalty for nonpayment of taxes, see "Taxation," §§ 845, 906.
- Enforcement of penalty for obstruction of highway, see "Highways," § 161.
- Enforcement of penalty for obstruction of street, see "Municipal Corporations," § 699.
- Enforcement of penalty for owning, keeping or frequenting disorderly house, see "Disorderly House," § 10.
- Enforcement of penalty for taking or exacting usury, see "Usury," § 142.
- Enforcement of penalty for use of unauthorized or false weights or measures, see "Weights and Measures," § 11.
- Enforcement of penalty for violation of anti-trust laws, see "Monopolies," § 30.
- Enforcement of penalty for violation of Chinese exclusion acts, see "Aliens," § 37.
- Enforcement of penalty for violation of civil rights laws, see "Civil Rights," § 14.
- Enforcement of penalty for violation of customs laws, see "Customs Duties," § 129.
- Enforcement of penalty for violation of election laws, see "Elections," § 323.
- Enforcement of penalty for violation of gaming laws, see "Gaming," § 57.
- Enforcement of penalty for violation of health regulations, see "Health," § 38.
- Enforcement of penalty for violation of immigration laws, see "Aliens," § 58.
- Enforcement of penalty for violation of insurance laws, see "Insurance," §§ 27, 28.
- Enforcement of penalty for violation of license laws in general, see "Licenses," § 41.
- Enforcement of penalty for violation of liquor laws, see "Intoxicating Liquors," §§ 178-195.
- Enforcement of penalty for violation of municipal ordinances, see "Municipal Corporations," § 633.
- Enforcement of penalty for violation of regulations relating to articles of food or drink, see "Food," § 16.
- Enforcement of penalty for violation of regulation relating to copyrights, see "Copyrights," § 30.
- Enforcement of penalty for violation of regulations relating to druggists, see "Druggists," § 11.
- Enforcement of penalty for violation of regulations relating to Indians, see "Indians," § 37.
- Enforcement of penalty for violation of regulations relating to trade-marks or trade-names, see "Trade-Marks and Trade-Names," § 50.
- Enforcement of penalty for violation of Sunday laws, see "Sunday," § 28.
- Enforcement of pledge, see "Pledges," §§ 53-60.
- Enforcement of regulation of charges for gas, see "Gas," § 14.
- Enforcement of regulations in respect to interstate transportation, see "Carriers," § 34.
- Enforcement of restrictions in deeds, see "Deeds," § 176.
- Enforcement of right of action pledged, see "Pledges," §§ 30, 58.
- Enforcement of rights between school districts on alteration of districts, see "Schools and School Districts," § 41.
- Enforcement of rights in respect to railroad fences and private crossings, see "Railroads," § 104.
- Enforcement of stockholders' liability, see "Banks and Banking," §§ 49, 250; "Corporations," §§ 252-280.
- Enforcement of taxes, see "Counties," § 194; "Drains," § 90; "Highways," §§ 128,

- 147; "Internal Revenue," § 28; "Levees," § 27; "Municipal Corporations," § 978; "Schools and School Districts," § 106; "Taxation," §§ 544-613, 614-694; "Towns," § 59.
- Enforcement or prevention of enforcement of regulations as to carriers, see "Carriers," § 18.
- Establishment and determination of claims to attached property, see "Attachment," §§ 302-316.
- Establishment and determination of claims to property garnished, see "Garnishment," §§ 213-225.
- Establishment and determination of claims to property taken on execution, see "Execution," §§ 188-204.
- Establishment and determination of heirship, see "Descent and Distribution," § 71.
- Establishment and determination of right of married woman to become sole trader, see "Husband and Wife," § 95.
- Establishment and enforcement of exemption from taxation, see "Taxation," § 251.
- Establishment and enforcement of liens or claims on property in hands of receiver, see "Receivers," § 78.
- Establishment and enforcement of right of exemption, see "Exemptions," §§ 135-152; "Homestead," §§ 209-218.
- Establishment and enforcement of rights and liens against estate of insolvent, see "Insolvency," § 72.
- Establishment and enforcement of trust, see "Trusts," §§ 359-377.
- Establishment and protection of easements, see "Easements," § 61.
- Establishment and protection of water rights, see "Waters and Water Courses," §§ 247, 282.
- Establishment and protection of water rights and other rights of property connected with public water supply, see "Waters and Water Courses," § 197.
- Establishment and restoration of lost instruments, see "Lost Instruments," §§ 3-11.
- Establishment of boundaries, see "Boundaries," §§ 26-56.
- Establishment of boundaries of counties, see "Counties," § 8.
- Establishment of bridges, see "Bridges," § 8.
- Establishment of drainage districts, see "Drains," § 14.
- Establishment of drains, see "Drains," §§ 25-38.
- Establishment of highways, see "Highways," §§ 18-68.
- Establishment of private roads, see "Private Roads," § 2.
- Establishment of railroad crossing, see "Street Railroads," § 41.
- Establishment of title to land after loss or destruction of records, see "Records," § 18.
- Establishment of will, see "Wills," §§ 203-434.
- Establishment or enforcement of rights or liens in bankruptcy proceedings, see "Bankruptcy," §§ 209-218.
- Foreclosure of judgment lien, see "Judgment," § 801.
- Foreclosure of lien for killing insects on fruit trees, see "Agriculture," § 9.
- Foreclosure of mortgage, see "Building and Loan Associations," § 39; "Chattel Mortgages," §§ 269-291; "Corporations," § 482; "Mortgages," §§ 380-590; "Railroads," §§ 180, 182-186, 188-192, 194-200.
- Foreclosure of right of redemption from tax sale, see "Taxation," § 708.
- Incorporation of municipalities, see "Municipal Corporations," § 12.
- Investigation of municipal financial affairs, see "Municipal Corporations," § 989.
- Judgment against real property for taxes, see "Taxation," §§ 636-650.
- Legitimation of illegitimate child, see "Bastards," § 14.
- Limitation of liability of shipowner, see "Shipping," § 209.
- Mandamus to compel issuance of liquor license, see "Intoxicating Liquors," § 74.
- Obtaining instructions as to acts of receiver, see "Receivers," § 113.
- Opening or setting aside partnership accounting, see "Partnership," § 348.
- Opening or setting aside settlement of account of executor or administrator, see "Executors and Administrators," § 516.
- Opening or setting aside settlement of account of guardian, see "Guardian and Ward," § 165.
- Opening or setting aside settlement of account of trustee, see "Trusts," § 333.
- Opening or vacating judgment, see "Judgment," §§ 384-388, 390-397.
- Opening or vacating judgment of justice of the peace, see "Justices of the Peace," § 128.
- Organization of school districts, see "Schools and School Districts," § 27.
- Protection of attorney's lien, see "Attorney and Client," § 190.
- Quieting title, see "Quieting Title."
- Quieting title to mines or mineral lands, see "Mines and Minerals," § 78.
- Quieting title to property purchased at execution sale, see "Execution," § 283.
- Reassessment of taxes, see "Taxation," § 500.
- Recovery of public office, see "Officers," § 83.
- Redemption from execution sale, see "Execution," § 301.
- Redemption from judicial sales in general, see "Judicial Sales," § 59.
- Redemption from mortgage sale, see "Chattel Mortgages," § 300; "Mortgages," §§ 611-623.
- Redemption from tax sale, see "Municipal Corporations," § 981; "Taxation," §§ 722, 723.
- Reduction of assessment for taxation, see "Taxation," § 499.
- Registration of titles to land, see "Records," § 9.
- Reinstatement of released mortgage, see "Mortgages," § 316.
- Removal of county seat, see "Counties," § 34.

Removal of obstructions on highways, see "Highways," § 157.

Removal of paupers, see "Paupers," § 27.

Removal of public officers, see "Municipal Corporations," § 159; "Officers," §§ 72-74; "Schools and School Districts," § 63.

Removal of trustee, see "Trusts," § 167.

Rescission of contract of sale, see "Sales," §§ 110, 130; "Vendor and Purchaser," § 104.

Rescission of insurance policy, see "Insurance," § 249.

Restraining acts of county or officers thereof, see "Counties," § 196.

Restraining acts of municipality or officers thereof, see "Municipal Corporations," § 1000.

Restraining acts of school district or officers thereof, see "Schools and School Districts," § 111.

Restraining acts of state or officers thereof, see "States," § 168½.

Restraining acts of town or officers thereof, see "Towns," § 61.

Restraining assessment for public improvements, see "Municipal Corporations," § 513.

Restraining enforcement of assessment for public improvements, see "Drains," § 91; "Highways," § 148; "Levees," § 29; "Municipal Corporations," § 538.

Restraining enforcement of taxes, see "Municipal Corporations," § 979; "Schools and School Districts," § 107; "Taxation," § 611.

Restraining execution, see "Execution," § 172.

Restraining transportation of natural gas, see "Gas," § 9.

Restraining unlawful combinations, see "Monopolies," § 24.

Review of judgment, see "Judgment," § 335.

Revival of judgment, see "Judgment," §§ 869-871.

Revocation of agency of broker, see "Brokers," §§ 10, 11.

Revocation of liquor license, see "Intoxicating Liquors," § 108.

Revocation or suspension of physician's certificate or license to practice, see "Physicians and Surgeons," § 11.

Sale of land to enforce assessment for public improvements, see "Municipal Corporations," §§ 540-543, 545-556, 558-572.

Sale of property by receivers, see "Receivers," § 133.

Sale of property of decedent, see "Executors and Administrators," §§ 332-359.

Sale of property of infant, see "Infants," § 39.

Sale of property of ward, see "Guardian and Ward," §§ 76-115.

Sale of trust property by trustee, see "Trusts," § 194.

Scire facias to enforce judgment, see "Judgment," § 856.

Scire facias to revive judgment, see "Judgment," § 870.

Separate maintenance of wife, see "Husband and Wife," §§ 285½-301.

Set-off of judgments, see "Judgment," § 883.

Setting aside agreements for separation of community, see "Husband and Wife," § 271.

Setting aside assessment for public improvements, see "Municipal Corporations," § 513.

Setting aside assessment for taxation, see "Taxation," § 500.

Setting aside assignment for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 341-356.

Setting aside attachment, see "Attachment," § 260.

Setting aside award of arbitrators, see "Arbitration and Award," § 78.

Setting aside conveyance fraudulent as to wife, see "Divorce," § 276; "Husband and Wife," § 6.

Setting aside decisions of land office, see "Public Lands," § 109.

Setting aside election under will, see "Wills," § 797.

Setting aside execution sale, see "Execution," § 256.

Setting aside foreclosure of railroad mortgages, see "Railroads," § 202.

Setting aside fraudulent transfers in general, see "Fraudulent Conveyances," §§ 237-328.

Setting aside judicial sales in general, see "Judicial Sales," § 45.

Setting aside mortgage, see "Chattel Mortgages," § 202.

Setting aside proceedings for establishment of drain, see "Drains," § 38½.

Setting aside sale of property of decedent, see "Executors and Administrators," §§ 149, 168, 380.

Setting aside sale on foreclosure of mortgage, see "Mortgages," § 369.

Setting aside sale on partition, see "Partition," § 107.

Setting aside settlement of assignee for benefit of creditors, see "Assignments for Benefit of Creditors," § 406.

Setting aside will, see "Wills," §§ 203-434.

Solemnization of illegal marriage, see "Marriage," § 30.

Summary proceedings against clerks of courts, see "Clerks of Courts," § 71.

Summary proceedings against defaulting tax collectors, see "Taxation," § 566.

Summary proceedings against husband for abandonment of wife, see "Husband and Wife," §§ 307-310.

Summary proceedings against sheriffs or constables, see "Sheriffs and Constables," §§ 96, 125.

Summary proceedings between co-sureties, see "Principal and Surety," § 199.

Summary proceedings by client against attorney, see "Attorney and Client," § 126.

Summary proceedings by landlord to recover demised premises, see "Landlord and Tenant," §§ 294-318.

Summary proceedings for collection of costs, see "Costs," § 280.

Summary proceedings for possession of personal property, see "Possessory Warrant."



Summary proceedings on bonds in garnishment proceedings, see "Garnishment," § 246.  
 Summary proceedings on bonds in replevin, see "Replevin," § 126.  
 Summary proceedings on bonds of executors or administrators, see "Executors and Administrators," § 536.  
 Summary proceedings on bonds of guardians, see "Guardian and Ward," § 181.  
 Summary proceedings on bonds of public officers, see "Counties," § 100; "Sheriffs and Constables," § 159; "Taxation," § 569.  
 Summary proceedings on bonds of receivers, see "Receivers," § 217.  
 Summary proceedings on bonds or undertakings on appeal or writ of error, see "Criminal Law," § 1198.  
 Summary proceedings on bonds or undertakings to secure costs, see "Costs," § 144.  
 Summary proceedings to abate nuisance, see "Nuisance," § 83.  
 Summary proceedings to compel payment of bids at judicial sales, see "Judicial Sales," § 28.  
 Summary proceedings to enforce assessment for public improvement, see "Municipal Corporations," §§ 545-556.  
 Summary proceedings to enforce liens in general, see "Liens," § 18½.  
 Summary proceedings to enforce penalty, see "Penalties," § 18.  
 Summary proceedings to protect and enforce right of exemption, see "Exemptions," § 135; "Homestead," § 207.  
 Summary proceedings to recover books, papers and other appurtenances of public office, see "Offices," § 85.  
 Supplementary proceedings, see "Execution," §§ 358-420.  
 Supplying or restoring lost records, see "Records," § 17.  
 Transfer of causes from one state court to another, see "Courts," § 487.  
 Trial of right of property, see "Execution," §§ 178-212; "Garnishment," §§ 200-226.  
 Vacating or setting aside judgment of divorce, see "Divorce," § 167.  
 Vacating satisfaction of judgment, see "Judgment," § 898.  
 Vacation of highway, see "Highways," § 77.

*Particular proceedings in actions.*

See "Appearance"; "Continuance"; "Costs"; "Depositions"; "Dismissal and Nonsuit"; "Evidence"; "Judgment"; "Jury"; "Limitation of Actions"; "Lis Pendens"; "Motions"; "Parties"; "Pleading"; "Process"; "Reference"; "Removal of Causes"; "Stipulations"; "Trial"; "Venue."  
 Assessment of damages, see "Damages," §§ 193-224.  
 Bill of particulars, see "Pleading," §§ 313-330.  
 Default, see "Judgment," §§ 92-177.  
 Distribution of proceeds of execution sale, see "Execution," § 328.

Distribution of proceeds of sale on foreclosure of mortgage, see "Mortgages," § 568.  
 Intervention to contest attachment, see "Attachment," § 293.  
 Intervention to contest garnishment, see "Garnishment," § 204.  
 Offer of judgment, see "Judgment," §§ 71-91.  
 Restraining particular proceedings, see "Injunction," § 27.  
 Revival, see "Abatement and Revival," §§ 71-77.  
 Revival of judgment, see "Judgment," §§ 851-872.  
 Sales under judgment, order or decree of court, see "Chattel Mortgages," §§ 285-288; "Execution"; "Judicial Sales"; "Mortgages," §§ 500½-554.  
 Transfer of causes from one state court to another, see "Courts," §§ 483-488.  
 Verdict, see "Trial," §§ 318-366.

*Particular remedies in or incident to actions.*

See "Arrest," §§ 1-57; "Attachment"; "Bail," §§ 1-38; "Deposits in Court"; "Discovery"; "Garnishment"; "Injunction"; "Ne Exeat"; "Receivers"; "Recognizances"; "Scire Facias"; "Sequestration"; "Set-Off and Counterclaim"; "Supersedeas"; "Tender."  
 Notice of pendency of action, see "Lis Pendens," §§ 13-20.  
 Restraining particular remedy, see "Injunction," § 27.  
 Stay of proceedings on appeal or writ of error, see "Appeal and Error," §§ 458-492.  
 Supplementary proceedings, see "Execution," §§ 358-420.

*Proceedings in exercise of special or limited jurisdictions.*

Adjudication of prize, see "War," § 28.  
 Courts of limited jurisdiction in general, see "Courts," §§ 159-197.  
 Criminal prosecution, see "Criminal Law."  
 Detention and return of immigrants excluded, see "Aliens," § 54.  
 Enforcement of maritime liens, see "Maritime Liens," §§ 55-75.  
 Exclusion or deportation of Chinese, see "Aliens," § 32.  
 Suits in admiralty, see "Admiralty"; "Collision," § 111; "Salvage," §§ 43-52; "Shipping," § 209.  
 Suits in equity, see "Equity."  
 Suits in justices' courts, see "Justices of the Peace," § 68-138.

*Review of proceedings.*

See "Appeal and Error"; "Audita Querela"; "Certiorari"; "Exceptions, Bill of"; "Habeas Corpus," § 20; "Judgment," §§ 336-402; "Justices of the Peace," §§ 139-210; "New Trial"; "Review."  
 Bill of review, see "Equity," §§ 442-466.  
 Necessity of valid cause of action to sustain appeal, see "Appeal and Error," § 151.

## I. GROUNDS AND CONDITIONS PRECEDENT.

### *Cross-References.*

Arbitration as condition precedent, see "Arbitration and Award," § 9.

Grounds for and right to damages, see "Damages," §§ 1-7.

### § 1. Nature and elements of cause of action.

#### *Cross-Reference.*

Motive in bringing suit, § 7.

(a) An offer to remove an obstruction, after the first damage has been suffered, cannot remove the cause of action arising therefrom.—*McTavish v. Carroll*, 13 Md. 429. [Cited and annotated in 53 L. R. A. 627, on extent of trespasser's liability for consequential injuries.]

### § 2. Acts or omissions constituting causes of action in general.

### § 3. Statutory rights of action.

### § 4. Illegal or immoral transactions.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 5. Criminal acts.

#### *Cross-References.*

See "Nuisance," §§ 6, 77; "Trove and Conversion," § 18.

Criminal prosecution as condition precedent, see post, § 10.

Nature and form of remedy, see post, § 18.

Waiver of tort, see post, § 28.

Effect of pendency of criminal prosecution, see "Abatement and Revival," § 5.

Exemplary damages, see "Damages," § 90.

Master's liability for criminal acts of servant, see "Master and Servant," § 307.

Perjury or subornation of perjury, see "Torts," § 13.

Refusal of officer to permit registration of voter, see "Elections," § 104.

(a) Code, art. 27, § 285, provides that every person convicted of larceny of the value of \$5 or upwards shall restore the money, goods, or thing taken to the owner, or pay him the full value thereof and be sentenced to the penitentiary, etc. *Held*, that the provision for the return of the goods, or value, while a part of the judgment in a prosecution for larceny, is not a part of the sentence, and was merely intended to obviate the necessity of recourse to civil suit for its recovery, and hence such

section did not create an exclusive jurisdiction for the recovery of stolen property nor prevent the maintenance of a civil action against the thief therefor.—*Downs v. City of Baltimore*, 111 Md. 674, 76 Atl. 861.

(b) The larceny of property does not divest the title.—*Ibid*.

### § 6. Actions for declarations of rights without other relief.

(a) A bill cannot be maintained by the grantor in a deed creating a trust to determine whether the deed prevents a testamentary disposition of the trust property by the grantor.—*Carroll v. Smith*, 99 Md. 653, 59 Atl. 131.

### § 7. Motive in bringing action.

#### *Cross-References.*

See "Nuisance," § 25; "Railroads," § 183.

Action by taxpayers to restrain illegal municipal acts, see "Municipal Corporations," § 987.

Evidence in action to construe will, see "Wills," § 703.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 8. Frivolous or collusive actions.

#### *Cross-Reference.*

Maxim de minimis non curat lex affecting equity jurisdiction, see "Equity," § 34.

(a) Where a trustee who represented stockholders in a railroad and held stock therein brought an action to determine whether a lease of the railroad's property was redeemable, the action was not fictitious or colorable merely because a resolution made at the time of giving the lease provided for the bringing of the action.—*Buckler v. Safe Deposit & Trust Co. of Baltimore*, 115 Md. 222, 80 Atl. 899.

### § 9. Unnecessary or vexatious actions.

#### *Cross-References.*

Stay, see post, § 69.

Action against administrator for accounting, see "Executors and Administrators," §§ 473, 474.

Action by executrix for order directing payment of money, see "Executors and Administrators," § 82.

Construction of wills, see "Wills," § 695.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 10. Conditions precedent in general.

### Cross-References.

Following state statutes and practice in federal courts, see "Courts," § 334.

Nonperformance ground for abatement, see "Abatement and Revival," §§ 19, 40.

Review as dependent on presentation of question in lower court, see "Appeal and Error," § 173.

(a) Where a criminal prosecution for larceny had been instituted, the civil remedy to recover the property stolen or its value was not suspended until after conviction.—*Downs v. City of Baltimore*, 111 Md. 674, 76 Atl. 861.

(b) Placing an obstruction in a mill race is an infringement of the owner's absolute right of property; and the continuing such obstruction is equally an infringement of the right; and this the party placing the obstruction in the race is bound to know at his peril; and he has no claim to notice from the owner to remove the obstruction before action brought.—*Lawson v. Price*, 45 Md. 123. [Cited and annotated in 52 L. R. A. 34, 49, on lost profits from torts as damages; in 22 L. R. A. (N. S.) 685, on duty of riparian proprietor affected by obstruction of natural water course to minimize damages.]

## § 11. Notice, demand, and tender.

## § 12. Defenses in general.

## § 13. Persons entitled to sue.

## § 14. Persons liable.

### Cross-References.

Persons liable in particular actions or for particular wrongs, see "Assault and Battery," § 18; "Collision," § 115; "Conspiracy," §§ 12-14; "False Imprisonment," § 15; "Fraud," § 30; "Libel and Slander," § 74; "Malicious Prosecution," § 42; "Negligence," § 14; "Nuisance," §§ 9, 10; "Trespass," § 30; "Trove and Conversion," § 25, and other specific heads.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 15. Same person plaintiff and defendant.

(a) Where A., B. and C., as partners, sold goods to D. and B., and thereafter B. assigned his interest in the claim to A. for a valuable consideration, the firm of A., B. & C. could not sue D. and B. at law for the use of A.—*Grahame v. Harris*, 5 G. & J. 489.

## II. NATURE AND FORM.

### Cross-References.

Actions in justices' courts, see "Justices of the Peace," § 67.

Actions in which attachment is authorized, see "Attachment," §§ 4-14.

Adoption by federal courts of practice of state courts, see "Courts," § 342.

As affecting limitations applicable, see "Limitation of Actions," §§ 16-42.

Changing form of action on appeal from justice's court, see "Justices of the Peace," § 174.

Effect of change in partnership membership, see "Partnership," § 242.

Improper form of action as ground for demurrer, see "Pleading," § 193.

Nature of action as affecting conclusiveness of judgment, see "Judgment," §§ 644-648; as affecting operation of former judgment as bar, see "Judgment," §§ 550-559, 589; as affecting right of collateral attack on judgment therein, see "Judgment," § 479; as affecting right to trial by jury, see "Jury," §§ 13, 18.

Review as dependent on theory of cause presented below, see "Appeal and Error," § 171.

Review of decisions, see "Appeal and Error," §§ 182-184.

Statement in pleading, see "Pleading," § 49.

Subject and title of acts, see "Statutes," § 117.

### Particular actions or proceedings.

Against grantee of mortgaged property, see "Mortgages," § 292.

Against railroad company for injuries by fire, see "Railroads," § 472.

Bastardy proceedings, see "Bastards," § 19.

Between co-sureties, see "Principal and Surety," § 200.

Between co-tenants, see "Tenancy in Common," § 38.

Between husband and wife, see "Husband and Wife," § 205.

Between partners, see "Partnership," § 102.

Between seller of goods and third person, see "Sales," § 225.

By creditors in aid of assignments for creditors, see "Assignments for Benefit of Creditors," § 295.

By lessors to recover possession of demised premises, see "Landlord and Tenant," § 280.

By or against banks, see "Banks and Banking," § 216.

By or against benefit association, see "Beneficial Associations," § 20.

By or against corporations in general, see "Corporations," § 501.

By or against co-tenant, see "Tenancy in Common," § 55.

By or against firms or partners, see "Partnership," § 193.

By or against foreign corporation, see "Corporations," § 664.

By or against receiver, see "Receivers," § 175.  
 By or against surviving partners or representatives of deceased partners, see "Partnership," § 258.  
 By or against trustees in bankruptcy, see "Bankruptcy," §§ 287, 288.  
 By owners of property injured by municipal improvement, see "Municipal Corporations," § 404.  
 By pledges to enforce right of action pledged, see "Pledges," § 58.  
 By surety against principal, see "Principal and Surety," § 190.  
 Condemnation proceedings, see "Eminent Domain," § 166.  
 For alimony, see "Divorce," § 199.  
 For breach of contract, see "Contracts," §§ 324-356.  
 For breach of contract of sale, see "Sales," §§ 369, 404; "Vendor and Purchaser," §§ 321, 342.  
 For breach of covenant, see "Covenants," § 104.  
 For breach of marriage promise, see "Breach of Marriage Promise," § 14.  
 For breach of warranty of goods sold, see "Sales," § 425.  
 For compensation of broker, see "Brokers," § 79.  
 For conspiracy, see "Conspiracy," § 15.  
 For damages for disclosure of contents of telegram, see "Telegraphs and Telephones," § 40.  
 For damages for removal, destruction of, or injury to logs or lumber on which lien is claimed, see "Logs and Logging," § 31.  
 For deceit, see "Fraud," § 31.  
 For default of bank in relation to collection, see "Banks and Banking," § 175.  
 For delay in transportation or delivery of goods, see "Carriers," § 102.  
 For dissolution and accounting of partnership, see "Partnership," § 318.  
 For divorce, see "Divorce," § 6½.  
 For ejection from theater, see "Theaters and Shows," § 4.  
 For ejection of passengers or intruders from train, see "Carriers," § 376.  
 For encroachment on adjoining land, see "Adjoining Landowners," § 9.  
 For enticing away child, see "Parent and Child," § 18.  
 For establishment and protection of easements, see "Easements," § 61.  
 For flowing lands, see "Waters and Water Courses," § 176.  
 For infringement of copyright, see "Copyrights," §§ 69, 70.  
 For infringement of trade-marks or trade-names, see "Trade-Marks and Trade-Names," § 79.  
 For injuries by servant, see "Master and Servant," § 325.  
 For injuries by trespassing animals, see "Animals," § 100.  
 For injuries from negligence in general, see "Negligence," § 102.  
 For injuries from negligence or default in transmission or delivery of tele-

graph or telephone message, see "Telegraphs and Telephones," § 59.  
 For injuries from nuisances, see "Nuisance," § 41.  
 For injuries to bridges, see "Bridges," § 27.  
 For injuries to easement, see "Easements," § 63.  
 For injuries to servant, see "Master and Servant," § 250.  
 For insurance premiums, see "Insurance," § 188.  
 For loss of or injury to goods in course of transportation, see "Carriers," § 127.  
 For loss of or injury to goods stored, see "Warehousemen," § 34.  
 For malicious prosecution, see "Malicious Prosecution," § 38.  
 For misdelivery or nondelivery of goods stored, see "Warehousemen," § 34.  
 For money lent, see "Money Lent," § 5.  
 For money received, see "Money Received," § 15.  
 For negligence in construction of telegraph or telephone lines, see "Telegraphs and Telephones," § 20.  
 For negligence or malpractice of physician or surgeon, see "Physicians and Surgeons," § 18.  
 For negligence or misconduct of broker, see "Brokers," § 38.  
 For negligence or misconduct of sheriff or constable, see "Sheriffs and Constables," § 127.  
 For partition, see "Partition," §§ 34-117.  
 For penalties, see "Penalties," § 16.  
 For penalties for abandonment of wife by husband, see "Husband and Wife," § 305½.  
 For price of land sold, see "Vendor and Purchaser," § 301.  
 For price or value of goods sold, see "Sales," § 340.  
 For recovery of land, see "Ejectment," §§ 3, 4.  
 For reformation of instrument, see "Reformation of Instruments," § 30.  
 For refusal of admission to theater, see "Theaters and Shows," § 4.  
 For rent, see "Landlord and Tenant," § 217.  
 For sale of land to enforce assessment for public improvement, see "Municipal Corporations," § 558.  
 For salvage, see "Salvage," § 43.  
 For seduction, see "Seduction," § 12.  
 For specific performance of contracts, see "Specific Performance," § 102.  
 For supplies furnished to, or expenditures incurred on behalf of paupers, see "Paupers," § 52.  
 For unfair competition in trade, see "Trade-Marks and Trade-Names," § 79.  
 For unpaid taxes, see "Taxation," § 584.  
 For usury, see "Banks and Banking," § 270; "Usury," §§ 89-133.  
 For wages of servant, see "Master and Servant," § 80.  
 For waste, see "Waste," § 15.  
 For wrongful arrest, see "False Imprisonment," § 16.

For wrongful attachment, see "Attachment," § 368.  
 For wrongful discharge of servant, see "Master and Servant," § 35.  
 For wrongful execution, see "Execution," § 464.  
 Habeas corpus proceedings, see "Habeas Corpus," § 1.  
 On appeal or supersedeas bond, see "Appeal and Error," § 1239.  
 On award of arbitrators, see "Arbitration and Award," § 85.  
 On bills or notes, see "Bills and Notes," § 448.  
 On bond of tax collector, see "Taxation," § 570.  
 On county officer's bond, see "Counties," § 101.  
 On county warrants, see "Counties," § 170.  
 On foreign judgment, see "Judgment," § 927.  
 On gambling contracts, see "Gaming," § 41.  
 On bonds for payment of alimony, see "Divorce," § 272.  
 On judgments, see "Judgment," § 902.  
 On lost instruments, see "Lost Instruments," § 14.  
 On separation agreements, see "Husband and Wife," § 281.  
 On subscription, see "Subscriptions," § 21.  
 Petitory actions, see "Real Actions," § 7.  
 Proceedings for judgment against real property for taxes, see "Taxation," § 636.  
 Proceedings to establish claims to attached property, see "Attachment," § 302.  
 Proceedings to establish claims to property garnished, see "Garnishment," § 218.  
 Proceedings to establish or enforce rights or liens in bankruptcy proceedings, see "Bankruptcy," §§ 208-218.  
 Proceedings to protect and enforce right of exemption, see "Exemptions," §§ 137-141; "Homestead," § 209.  
 Quo warranto proceedings, see "Quo Warranto," § 26.  
 Summary proceedings by landlord to recover possession of demised premises, see "Landlord and Tenant," § 294.  
 To abate or restrain nuisance, see "Nuisance," § 18.  
 To annul marriage, see "Marriage," § 57.  
 To compel restitution on reversal, see "Appeal and Error," § 120b.  
 To construe will, see "Wills," § 695.  
 To enforce charge on property devised or bequeathed, see "Wills," § 826.  
 To enforce indemnity, see "Indemnity," § 15.  
 To enforce liabilities against married woman's separate estate, see "Husband and Wife," § 176.  
 To enforce liability of officers and agents of corporation for corporate debts and acts, see "Corporations," § 351.  
 To enforce liability of stockholders for corporate debts and acts, see "Corporations," § 259.

To enforce license fees or taxes, see "Licenses," § 32.  
 To enforce lien on logs, lumber, mills, or mill products, see "Logs and Logging," § 33.  
 To enforce maritime liens, see "Maritime Liens," §§ 55-70.  
 To enforce mechanic's lien, see "Mechanics' Liens," §§ 245, 246.  
 To enforce municipal taxes, see "Municipal Corporations," § 978.  
 To enforce national bank stockholder's liability for debts of bank, see "Banks and Banking," § 250.  
 To enforce vendors' liens, see "Vendor and Purchaser," § 269.  
 To establish and enforce trust, see "Trusts," § 359.  
 To establish and restore lost instrument, see "Lost Instruments," § 3.  
 To establish boundaries, see "Boundaries," § 26.  
 To establish title to land after loss of records, see "Records," § 18.  
 To foreclose mortgages, see "Chattel Mortgages," § 269; "Mortgages," §§ 380-390.  
 To quiet title, see "Quieting Title," § 27.  
 To recover for trespass on mining property or for conversion of minerals, see "Mines and Minerals," § 51.  
 To recover goods purchased, see "Sales," § 399.  
 To recover on municipal warrant, see "Municipal Corporations," § 905.  
 To recover possession of mortgaged property, see "Mortgages," § 213.  
 To recover price paid for goods, see "Sales," § 390.  
 To recover price paid for land, see "Vendor and Purchaser," § 338.  
 To recover proceeds of goods consigned to factor, see "Factors," § 42.  
 To recover taxes paid, see "Taxation," § 543.  
 To recover usurious interest paid, see "Usury," § 102.  
 To redeem from mortgage sale, see "Mortgages," § 611.  
 To restrain execution, see "Execution," § 172.  
 To set aside fraudulent transfer, see "Fraudulent Conveyances," § 237.

## § 16. Nature of remedy by action.

(a) A proceeding in bastardy is of a criminal nature.—State v. Phelps, 9 Md. 21; Bake v. State, 21 Md. 422. [Cited and annotated in 40 L. R. A. (N. S.) 145, on limitation applicable to bastardy proceedings or action for support.]

(b) An action to enforce a mechanics' lien is a proceeding in rem.—Carson v. White, 6 Gill 17. [Cited and annotated in 23 L. R. A. (N. S.) 540, on right of other claimants of property to intervene in attachment.]

## § 17. What law governs.

### Cross-References.

Rules of evidence, see post, § 66.

Actions by or against Indians, see "Indians," § 27.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 18. Civil or criminal.

### Cross-References.

Criminal acts as cause of action, see ante, § 5.

Action for penalty for permitting animals to run at large, see "Animals," § 56.

Bastardy proceedings, see "Bastards," § 19.

Conspiracy, see "Conspiracy," § 15.

Divorce suits, see "Divorce," § 6½.

Proceedings for contempt, see "Contempt," § 40.

Proceedings for deportation of Chinese persons, see "Aliens," § 32.

Proceedings for removal of policeman, see "Municipal Corporations," § 185.

### Annotation.

How far proceedings for violation of ordinance are to be regarded as prosecutions for crime.—33 L. R. A. 33, note.

Suit for statutory penalty as a civil or criminal prosecution.—27 L. R. A. (N. S.) 739, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 19. Remedial or penal.

### Cross-Reference.

Proceedings for contempt, see "Contempt," § 40.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 20. Action or special proceeding.

### Cross-References.

See "Animals," § 63; "Certiorari," § 1.

Appeal from decision of city auditing board, see "Municipal Corporations," § 1014.

Application for order of sale of land of decedent, see "Executors and Administrators," § 332.

Bastardy proceedings, see "Bastards," § 19.

Decisions of state courts as authority in federal courts, see "Courts," § 372.

Determination of mode of crossing by one railroad over another, see "Railroads," § 91.

Election contest, see "Elections," § 286.

Probate and contest of wills, see "Wills," § 222.

Proceeding against executor to compel accounting, see "Executors and Administrators," § 470.

Proceeding for appointment of administrator, see "Executors and Administrators," § 20.

Proceeding to open accounting by executor or administrator, see "Executors and Administrators," § 509.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 21. Legal or equitable.

### Cross-References.

See "Dower," § 71; "Ejectment," § 4; "Fraud," § 31; "Garnishment," § 64; "Nuisance," § 18.

Change in character or form, see post, § 36.

What law governs, see ante, § 17.

Action on adverse claim to mining location, see "Mines and Minerals," § 38.

Actions between corporation and its officers or agents, see "Corporations," § 319.

Affecting right to trial by jury, see "Jury," §§ 13, 14.

Against estate of decedent, see "Executors and Administrators," § 421.

Between husband and wife, see "Husband and Wife," § 205.

Causes removed from state to federal court, see "Removal of Causes," § 116.

Enforcement in federal courts of state statutes authorizing equitable relief in actions at law, see "Courts," § 371.

Following state statutes and practice in federal courts, see "Courts," § 342.

For breach of covenant, see "Covenants," § 104.

For contribution, see "Contribution," § 9.

Foreclosure of liens for labor or materials furnished under contract for public improvements, see "Municipal Corporations," § 373.

Intervention in action at law for purpose of setting up equitable rights, see "Parties," § 41.

On contracts in general, see "Contracts," § 324.

Review of decision of trial court as to form of action, see "Appeal and Error," § 853.

Transfer of causes from one docket to another, see "Trial," § 11.

## § 22.—Nature of action.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 23.—Equitable relief in action at law.

### Annotation.

Statutory provision for summons with claim for injunction.—See Code, art. 75, §§ 125 *et seq.*

(a) Under Code, art 75, § 86, allowing equitable defenses at law, a plea of an equitable defense, to confer on a court of law jurisdiction of a court of equity, must show a case where the latter would have restrained the execution of the judgment if it had been obtained in the court of law.—

Urner v. Sollenberger, 89 Md. 316, 43 Atl. 810. [Cited and annotated in 31 L. R. A. (N. S.) 902, on fraud as ground of relief from subscription to stock after insolvency of corporation.]

## § 24.—Equitable defenses in action at law.

### Cross-References.

See "Bills and Notes," § 448; "Ejectment," § 4.

Effect on right to equitable relief against judgment of failure to interpose, see "Judgment," § 430.

Enforcement in federal courts of state statutes authorizing equitable defenses in actions at law, see "Courts," § 371.

In suits in probate courts, see "Courts," § 202.

Right to impeach release in action on liability released, see "Release," § 24.

### Annotation.

Statutory provisions.—See Code, art. 75, §§ 86 *et seq.*

(a) The defense of estoppel, made as against the intervening claimant in attachment proceedings, may not be made by way of a plea on equitable grounds, since that defense is available under the common law practice.—Lemp Brewing Co. v. Mantz, 120 Md. 176, 87 Atl. 814.

(b) A plea by way of defense on equitable grounds must set out all the facts necessary to establish defendant's right to the relief claimed.—Lemp Brewing Co. v. Mantz, 120 Md. 176, 87 Atl. 814.

(c) Under Code, art. 75, § 86, allowing equitable defenses at law, a plea of an equitable defense, to confer on a court of law jurisdiction of a court of equity, must show a case where the latter would have restrained the execution of the judgment if it had been obtained in the court of law.—Urner v. Sollenberger, 89 Md. 316, 43 Atl. 810. [Cited and annotated in 31 L. R. A. (N. S.) 902, on fraud as ground of relief from subscription to stock after insolvency of corporation.]

## § 25.—Under codes and practice acts.

### Cross-References.

As affecting mechanic's lien foreclosure, see "Mechanics' Liens," § 309.

Effect on form of remedy for revision of proceedings at trial in trial court, see "New Trial," § 109.

In probate courts, see "Courts," § 202.

(a) Under Code, art. 75, § 86, allowing equitable defenses at law, a plea of an equitable defense, to confer on a court of law jurisdiction of a court of equity, must show a case where the latter would have restrained the execution of the judgment if it had been obtained in the court of law.—Urner v. Sollenberger, 89 Md. 316, 43 Atl. 316.

## § 26. Contract or tort.

### Cross-References.

Conformity of judgment to form of action, see "Judgment," § 249.

Effect, on action for fraud, of existence of remedy by action on contract, see "Fraud," § 32.

Proceeding on contract as barring remedy in tort, see "Election of Remedies," §§ 3, 15.

## § 27.—Nature of action.

(a) Where plaintiff leased one side of a building to defendant, and in a declaration in two counts charged defendant with having run great quantities of foul and filthy water into plaintiff's adjoining cellar, and in the second count with having permitted fowls under his control to make incursions on plaintiff's premises and damage his goods, the declaration sufficiently charged causes of action in trespass, under Code, art. 75, § 3, providing that any declaration which contains a plain statement of the facts necessary to constitute a ground of action shall be sufficient, and hence was not demurrable for failure to indicate with certainty whether defendant was charged with a tort or breach of contract.—Lapp v. Stanton, 116 Md. 197, 81 Atl. 675.

(b) In an action of tort against an owner and contractor for injuries to plaintiff's property, occasioned by defendants in excavating an adjoining lot, it was proper to instruct that, if the injury was caused by the contractor's failure to properly perform a contract with plaintiff for the protection of the property, the verdict must be for the contractor.—Samuel v. Novak, 99 Md. 558, 58 Atl. 19. [Cited and annotated in 12 L. R. A. (N. S.) 930, on tort for negligent breach of contract between private parties.]

(c) Where a passenger was ejected from a railroad train by reason of a defect in her return ticket, in failing to properly describe

her personal characteristics, which resulted from the conductor's negligence in punching said return ticket on the going trip, such passenger was only entitled to recover damages in an action for breach of contract, and could not recover in an action *ex delicto*.—*Western Maryland R. Co. v. Schaun*, 97 Md. 563, 55 Atl. 701.

### § 28.—Waiver of tort.

#### *Cross-References.*

See "Municipal Corporations," § 742.

Evidence in action for conversion, see "Trover and Conversion," § 36.

Pleading in trover, see "Trover and Conversion," § 34.

(a) Where a debtor mortgages chattels to a creditor, and subsequently deeds them in trust for creditors to one who sells them and receives the purchase money, the tort may be waived, and assumpsit brought for money had and received.—*Leighton v. Preston*, 9 Gill 201.

(aa) If one convert the chattel of another by selling it, assumpsit for money had and received will lie; but a mere conversion, without a sale of the chattel, will not authorize the owner to treat it as sold, and maintain assumpsit for its value.—*Stockett v. Watkins*, 2 G. & J. 326, 20 Am. Dec. 438.

(b) If A. purchases goods of B., and pays him the purchase money, and B. afterwards takes the goods in possession, the proper remedy is trover, and A. cannot support assumpsit against B. to recover back the purchase money.—*Kirwan v. Raborg*, 1 H. & J. 296.

### § 29. Forms of action at common law.

#### *Cross-References.*

See "Malicious Prosecution," § 38; "Master and Servant," § 329.

Affecting jurisdiction of justice of the peace, see "Justices of the Peace," § 38.

### § 30.—Distinctions as to form.

(a) A count alleging a letting by plaintiff to defendant of certain tenements at a specified rate per month, and the occupation thereof for a certain period, and alleging the amount due on account of such rental, is a count in assumpsit, under Code, art. 75, § 24, although it does not aver a promise by the defendant to pay.—*Swem v. Sharretts*, 48 Md. 408.

(b) When an injury is effected by regular process of a court of competent jurisdiction, case is the proper remedy, and trespass is not sustainable, although the process

may have been maliciously adopted.—*Warfield v. Walter*, 11 G. & J. 80.

(c) Trespass *quare clausum* does not lie for being prevented from using the water of a well on the land of the defendant, but which the plaintiff had the right to use. The proper remedy is case.—*Shafer v. Smith*, 7 H. & J. 67.

(d) Case is the only proper action for depriving plaintiff of the use of a well, which he had the right to use, on defendant's land, the injury being committed by the erection of a wall.—*Shafer v. Smith*, 7 H. & J. 67.

### §§ 31, 32.—Waiver, and abolition of distinctions.

#### *Cross-Reference.*

See § 30, *ante*.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 33. Statutory remedies.

### § 34.—In general.

(a) Though the forms of pleading have been simplified by the Code, the forms of action have been kept distinct.—*Smith v. Woman's Medical College of Baltimore City*, 110 Md. 441, 72 Atl. 1107.

### § 35.—Cumulative or exclusive remedies.

#### *Cross-References.*

See "Animals," § 100; "Carriers," §§ 18, 408; "Executors and Administrators," § 421; "Fraud," § 31; "Master and Servant," § 250; "Municipal Corporations," §§ 525, 978, 980; "Negligence," § 106; "Nuisance," § 71; "Quieting Title," § 1; "Railroads," § 104; "Sheriffs and Constables," § 127; "Taxation," §§ 543, 567, 572, 584, 585, 792.

Enforcement of agister's lien, see "Animals," § 26.

Enforcement of liability of corporate officers, see "Banks and Banking," § 82; "Corporations," § 579.

Enforcement of stockholder's liability, see "Banks and Banking," §§ 49, 250; "Corporations," § 562.

Enforcement of stock subscription, see "Corporations," § 90.

Execution against personal representative, see "Executors and Administrators," § 456.

Penalty for violation of regulations as to carriage of live stock as excluding action for damages, see "Carriers," § 211.

Proceedings for discovery of assets of decedent's estate, see "Executors and Administrators," § 85.

Proceedings on insolvency of building and loan associations, see "Building and Loan Associations," § 42.

Recovery for communication of disease to animals, see "Animals," § 33.



Recovery for injuries by trespassing animals, see "Animals," § 100.

Recovery of price of land sold by administrator with will annexed, see "Executors and Administrators," § 146.

Relief against municipal assessment, see "Municipal Corporations," § 513.

Remedies of owners of property taken for public use, see "Eminent Domain," § 267.

Remedy for recovery of usury paid to national bank, see "Banks and Banking," § 270.

Review of assessments for taxation, see "Taxation," § 453.

Statutory creation of remedy as affecting equity jurisdiction, see "Equity," § 50.

(a) When two statutes provide separate remedies, differing only in form, for the same grievance, it is to be presumed that the legislature intended, by the later act, to prescribe the only rules which should govern in such cases.—*Montel v. Consolidation Coal Co.*, 39 Md. 164.

(b) Where a purely statutory right is asserted, and there is no statutory provision giving a specific remedy, the court will adopt an analogous common-law remedy in furtherance of justice.—*Commissioners v. Duckett*, 20 Md. 468.

(c) Where the common law gives a remedy, and another is provided by statute, the latter is merely cumulative, unless expressly or by implication declared exclusive by the statute.—*Washington, etc., Road v. State*, 19 Md. 239. [*Cited and annotated in 69 L. R. A. 142, on recovery for services and expenses under contract ended by insolvency and dissolution of corporation.*]

### § 36. Change of character or form.

#### Cross-References.

See "Elections," § 269.

By amendment of pleadings, see "Pleading," § 249.

Changing proceeding for determination of heirship into one for probate of will, see "Wills," § 222.

Conformity of judgment to nature of action stated in pleadings, see "Judgment," § 249.

Converting certiorari into suit in equity, see "Certiorari," § 1.

Suit for fees dismissed on appeal from justice's court as motion to retax costs, see "Justices of the Peace," § 167.

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### § 37. Error as to character or form.

#### Cross-References.

See "Trove and Conversion," § 13.

Ground for dismissal of action or nonsuit, see "Dismissal and Nonsuit," § 54.

Ground for reversal on appeal or other proceeding for review, see "Appeal and Error," § 1167.

Not prejudicial, see "Appeal and Error," § 1035.

(a) When prayers do not refer to the pleadings, recovery depends not on the form of action nor state of the pleadings, but on the case made by the proof.—*Swartz v. Gottlieb-Bauernschmidt-Straus Brewing Co.*, 109 Md. 393, 71 Atl. 854.

## III. JOINDER, SPLITTING, CONSOLIDATION, AND SEVERANCE.

Election between causes of action, see "Pleading," § 369.

Joinder in United States courts in Indian Territory, see "Courts," § 435.

Joinder of causes in admiralty, see "Admiralty," § 30.

Joinder of causes of action affecting jurisdiction of justices of the peace, see "Justices of the Peace," § 44.

Joinder of causes of action as affecting award of costs, see "Costs," § 29.

Joinder of causes of action as affecting statutory new trial as of right, see "New Trial," § 179.

Joinder of causes of action for divorce, see "Divorce," § 8.

Joinder of causes of action for infringement of copyright, see "Copyrights," § 78.

Joinder of causes of action for infringement of patents, see "Patents," § 285.

Joinder of causes of action for penalties for violations of municipal regulations, see "Municipal Corporations," § 633.

Joinder of causes of action in justices' courts, see "Justices of the Peace," § 68.

Joinder of counts in indictment or information, see "Indictment and Information," §§ 127-131.

Joinder of creditors as co-plaintiffs in creditors' suit, see "Creditors' Suit," § 25.

Joinder of mandamus proceedings, see "Mandamus," § 8.

Joinder of mechanics' liens in one proceeding for enforcement, see "Mechanics' Liens," § 252.

Joinder to confer jurisdiction on courts, see "Courts," §§ 121, 312, 328.

Misjoinder as ground for arrest of judgment, see "Judgment," § 260.

Misjoinder as harmless error, see "Appeal and Error," § 1039.

Misjoinder of causes of action as ground for demurrer, see "Pleading," § 193.

Pleading separate causes, see "Pleading," §§ 51, 52.

Review of objections as to misjoinder of causes, see "Appeal and Error," § 193.

State laws as rule of decision in federal courts, see "Courts," §§ 358-376.

Waiver of objection to misjoinder of causes, see "Pleading," § 406.

### § 38. Single and entire cause of action in general.

#### Cross-References.

Splitting cause of action, see post, § 58.

What causes of action may be joined, see post, § 50.

(a) Separate suits before a magistrate may be brought on interest notes payable at different dates, for a loan secured by mortgage, although the actions are not brought until all of the notes have matured.—*Presstman v. Beach*, 61 Md. 203.

(b) Where a bond is conditioned for the payment of a specified sum in five annual installments, with interest, each installment constitutes a separate cause of action.—*Ahl v. Ahl*, 60 Md. 207. [*Cited and annotated in 8 L. R. A. (N. S.) 1198, on effect of failure to introduce by amendment breaches of contract pending action.*]

(c) An action to recover on a bond given to indemnify against outstanding debts of a partnership cannot be defeated on the ground that there had been a former recovery on the same bond between the same parties, where it appears that the second suit was for breaches of the bond not embraced in the first suit.—*Orendorff v. Utz*, 48 Md. 298. [*Cited and annotated in 62 L. R. A. 448, 457, on form of judgment on penal bonds; in 8 L. R. A. (N. S.) 1198, on effect of failure to introduce by amendment breaches of contract pending action.*]

(d) Where two tenants in common make a lease, reserving portions of the rent to each, each one may recover his portion in a separate action.—*Lahy v. Holland*, 8 Gill 445, 50 Am. Dec. 705.

(e) Where two tenants in common make a lease reserving portions of the rent for each, the covenant being several, one cannot sue as survivor of the other, he being dead; nor can he, as such survivor, recover the whole sum against one who had become surety that the covenantors will pay the rent.—*Lahy v. Holland*, 8 Gill 445, 50 Am. Dec. 705.

(f) Where part owners of a ship separately authorize an agent to sell it, each may have an action against him for his share of the money.—*Milburn v. Guyther*, 8 Gill 92, 50 Am. Dec. 681.

(g) Co-parceners cannot recover in sepa-

rate actions against the person who had received the rent of their land as trustee, upon an implied demise, upon a count for use and occupation.—*Hoffar v. Dement*, 5 Gill 132, 46 Am. Dec. 628.

(gg) In trespass for breaking the plaintiff's close and cutting down his trees, if the plaintiff fails to prove the cutting of his trees, he may still recover for the breach of his close.—*Mondell v. Perry*, 2 G. & J. 193.

(h) A plaintiff cannot split up an entire cause of action, so as to maintain two suits upon it, without defendant's consent.—*Strike's Case*, 1 Bland 57.

### § 39. Joinder of causes of action at common law.

#### § 40.—In general.

(a) The usual test for determining whether or not several counts may be joined in the same declaration is: Can the same pleas be pleaded to and the same judgment rendered on all the counts?—*Price v. Mutual Reserve Life Ins. Co.*, 107 Md. 374, 68 Atl. 689.

(b) The rule as to joining causes of action is that when the same plea may be pleaded, and the same judgment rendered on all the counts, they may be joined.—*Williams v. Bramble*, 2 Md. 313.

(c) In trespass for breaking the plaintiff's close and cutting down his trees, if the plaintiff fails to prove the cutting of his trees, he may still recover for the breach of his close.—*Mondell v. Perry*, 2 G. & J. 193.

#### § 41.—Forms of action.

(a) A count charging the fraudulent procurement of money by an insurer from the insured on a policy of life insurance cannot be joined with common counts in assumpsit and counts alleging breaches of the contract of insurance.—*Price v. Mutual Reserve Life Ins. Co.*, 107 Md. 374, 68 Atl. 689.

(b) In an action for trespass *quare clausum fregit*, allegations of acts amounting to a trespass *vi et armis*, which form a component part of the outrage complained of, may be joined therewith, and damages may be recovered therefor as if a separate action had been brought.—*Haines' Exrs v. Haines*, 104 Md. 208, 64 Atl. 1044.

(c) The vendee of land, at the time of making the agreement, paid a portion of the purchase price. When the vendor failed to

fulfill his agreement to convey, the vendee brought an action in covenant. The declaration contained but one count, and the vendor claimed that the damages prayed were partly such as could only have been recovered in assumpsit, and partly such as were properly recoverable in covenant. *Held*, that there was no misjoinder, since a portion of the damages recoverable in such case is the purchase money paid by the vendee, and even if that were not so, there being but one count in the declaration, the verdict would be supported by referring the damages assessed to the proper cause of action, rather than the erroneous one.—*Hartsock v. Mort*, 76 Md. 281, 25 Atl. 303.

(d) Notwithstanding that the act of 1856, c. 112, simplified the forms of pleading and practice in this state, and that Code, art. 75, § 24, sub-sec. 107, made it optional with the pleader to use the new or common-law forms, the forms of action have been preserved and kept distinct, and a declaration is fatally defective which joins the common counts in assumpsit with debt on bond.—*Smith v. State*, 66 Md. 215, 7 Atl. 49.

(e) A judgment will not be arrested on the ground that a good count in trover is joined with defective counts in assumpsit.—*Penniman v. Winner*, 54 Md. 127.

(f) Counts in debt and assumpsit cannot be joined—*Canton Nat. Bldg. Ass'n v. Weber*, 34 Md. 669; *Swem v. Sharretts*, 48 Md. 408.

(g) A count for entering and breaking the plaintiff's close may properly be joined with counts for polluting a stream of water to the use of which in its natural state he is entitled.—*Gladfelter v. Walker*, 40 Md. 1. [*Cited and annotated in 41 L. R. A. 751, on correlative rights of upper and lower proprietors as to use and flow of stream; in 24 L. R. A. (N. S.) 1186, on liability of one of several polluters of stream; in 25 L. R. A. (N. S.) 593, on prescriptive right to pollute stream.*]

(h) In an action by a negro apprentice for damages for being wrongfully enlisted by his master as a substitute for his son who had been drafted, counts in case may properly be joined to counts in trespass.—*Gent v. Cole*, 38 Md. 110.

(i) A declaration contained a count in trover, and one in trespass vi et armis de bonis asportatis, both relating to the same property. Not guilty was pleaded to both counts. Verdict for plaintiff, and motion in arrest of judgment. *Held*, that this is not such a misjoinder of counts as to be fatal on this motion.—*Williams v. Bramble*, 2 Md. 313.

(j) Acts which amount to trespass vi et armis, and which are component parts of one offense, may be united with a claim for trespass quare clausum, and damages for both recovered in the same action.—*Moats v. Witmer*, 3 G. & J. 118.

(k) In Maryland, tobacco was formerly considered as money in judicial proceedings, and, in actions of debt, tobacco and money counts were joined.—*Crain v. Yates*, 2 H. & G. 332.

#### § 42.—Parties and interests involved.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 43. Joinder of causes of action under codes and practice acts.

##### *Cross-References.*

State laws as rules of decision in federal courts, see "Courts," § 374.

Election between causes of action, see "Pleading," § 369.

#### § 44.—Forms of action.

(a) A count in a declaration that defendant broke and entered plaintiff's lands and flooded the same with water may be joined with a count that by the erection of an embankment and by cutting ditches defendant collected and emptied a large quantity of water into a ditch which led to and through plaintiff's land, greatly in excess of that flowing before and of the capacity of the ditch, to plaintiff's damage.—*New York, P. & N. R. Co. v. Jones*, 94 Md. 24, 50 Atl. 423. [*Cited and annotated in 12 L. R. A. (N. S.) 682, on liability of railroad conducting surface water through embankments onto adjoining property.*]

(b) In an action for slander of a wife brought by a husband and wife jointly, where the declaration contains several counts, each setting out words spoken at different times, upon some of which the husband and wife can sue jointly, and upon

others of which the husband only can sue, and the case is tried upon the plea of not guilty, and the jury find for plaintiffs generally on the whole declaration, without distinction of counts, and assess entire damages, the judgment is properly arrested for misjoinder of parties and of causes of action.—*Hemming v. Elliott*, 66 Md. 197, 7 Atl. 110. [*Cited and annotated* in 24 L. R. A. (N. S.) 605, on slander and libel in charging woman with unchastity.]

(c) The declaration in an action against a railroad company charged in the first count that defendant, through its negligence, set fire to plaintiff's fences, and in the second count that, by covenants of defendant on conveyance to it of the right of way by plaintiff's predecessor in title, it had agreed to erect fences and keep them in repair, and that it had failed so to do. *Held*, that although covenant would lie on the cause of action set out in the second count, the breach of covenant may also be regarded as sounding in tort, so that a demurrer on the ground of misjoinder of counts will not lie.—*Philadelphia, W. & B. R. Co. v. Constable*, 39 Md. 149.

#### § 45.—Nature and grounds of action in general.

(a) A count in a declaration that defendant broke and entered plaintiff's lands and flooded the same with water may be joined with a count that by the erection of an embankment and by cutting ditches defendant collected and emptied a large quantity of water into a ditch which led to and through plaintiff's land, greatly in excess of that flowing before and of the capacity of the ditch, to plaintiff's damage.—*New York, P. & N. R. Co. v. Jones*, 94 Md. 24, 50 Atl. 423. [*Cited and annotated* in 12 L. R. A. (N. S.) 682, on liability of railroad conducting surface water through embankments onto adjoining property.]

(b) In assumpsit against an executor to recover taxes due on the estate of his testatrix, it is not a misjoinder to unite a count for taxes due by the testatrix in her lifetime with a count for taxes due from the executor on the same property while in his hands as executor.—*Bonaparte v. State*, 63 Md. 465.

(c) Counts against an executor or administrator, as such, cannot be joined with counts against him in his own right.—*Grahame v. Harris*, 5 G. & J. 489.

#### § 46.—Legal and equitable.

##### *Cross-Reference.*

At common law, see ante, § 40.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 47.—Contract and tort.

##### *Cross-Reference.*

Claims arising out of same transaction, see post, § 48.

(a) The declaration in an action against a railroad company charged in the first count that defendant, through its negligence, set fire to plaintiff's fences, and in the second count that, by covenants of defendant on conveyance to it of right of way by plaintiff's predecessor in title, it had agreed to erect fences and keep them in repair, and that it had failed so to do. *Held*, that although covenant would lie on the cause of action set out in the second count, the breach of covenant may also be regarded as sounding in tort, so that a demurrer on the ground of misjoinder of counts will not lie.—*Philadelphia, W. & B. R. Co. v. Constable*, 39 Md. 149. [*Cited and annotated* in 21 L. R. A. 260, on liability for setting fires which spread to property of others.]

#### § 48.—Claims arising out of same transaction or transactions connected with same subject of action.

##### *Cross-Reference.*

See § 47, ante.

##### *Annotation.*

Injury both to person and property at the same time as constituting more than one cause of action.—50 L. R. A. 161; 36 L. R. A. (N. S.) 240, notes.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 49.—Complete remedy.

#### § 50.—Parties and interests involved.

##### *Cross-References.*

Single and entire cause of action, see ante, § 38.

Joinder of creditors as co-plaintiffs in creditors' suit, see "Creditors' Suit," § 25.

(a) In an action for slander of a wife

brought by a husband and wife jointly, where the declaration contains several counts, each setting out words spoken at different times, upon some of which the husband and wife can sue jointly, and upon others of which the husband only can sue, and the case is tried upon the plea of not guilty, and the jury find for plaintiffs generally on the whole declaration, without distinction of counts, and assess entire damages, the judgment is properly arrested for misjoinder of parties and of causes of action.—*Hemming v. Elliott*, 66 Md. 197, 7 Atl. 110. [*Cited and annotated* in 24 L. R. A. (N. S.) 605, on slander and libel in charging woman with unchastity.]

(b) In assumpsit against an executor to recover taxes due on the estate of his testatrix, it is not a misjoinder to unite a count for taxes due by the testatrix in her lifetime with a count for taxes due from the executor on the same property while in his hands as executor.—*Bonaparte v. State*, 63 Md. 465.

(c) Counts against an executor or administrator, as such, cannot be joined with counts against him in his own right.—*Grahame v. Harris*, 5 G. & J. 489.

#### § 51.— Venue or place of trial.

#### § 52. Joinder of causes of action under civil law.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 53. Splitting causes of action.

##### Cross-References.

Drainage proceedings, see "Drains," § 63.  
Ground for abatement, see "Abatement and Revival," § 5.

Interest as separate cause of action, see "Interest," § 62.

Judgment as bar to another action, see "Judgment," §§ 591-599.

Penalties for failure to list or for making false list of property for taxation, see "Taxation," § 845.

Stipulation as waiver of objection, see "Stipulations," § 14.

To confer jurisdiction on justice of the peace, see "Justices of the Peace," § 44.

Election between causes of action, counts and defenses, see "Pleading," § 369.

(a) Separate suits before a magistrate may be brought on interest notes payable at different dates, for a loan secured by mortgage, although the actions are not brought

until all of the notes have matured.—*Presstman v. Beach*, 61 Md. 203.

(b) Where a bond is conditioned for the payment of a specified sum in five annual installments, with interest, each installment constitutes a separate cause of action.—*Ahl v. Ahl*, 60 Md. 207. [*Cited and annotated* in 8 L. R. A. (N. S.) 1198, on effect of failure to introduce by amendment breaches of contract pending action.]

(c) An action to recover on a bond given to indemnify against outstanding debts of a partnership cannot be defeated on the ground that there had been a former recovery on the same bond between the same parties, where it appears that the second suit was for breaches of the bond not embraced in the first suit.—*Orendorff v. Utz*, 48 Md. 298. [*Cited and annotated* in 62 L. R. A. 448, 457, on form of judgment on penal bonds; in 8 L. R. A. (N. S.) 1198, on effect of failure to introduce by amendment breaches of contract pending action.]

(d) Where two tenants in common make a lease, reserving portions of the rent to each, each one may recover his portion in a separate action.—*Lahy v. Holland*, 8 Gill 445, 50 Am. Dec. 705.

(e) Where two tenants in common make a lease reserving portions of the rent for each, the covenant being several, one cannot sue as survivor of the other, he being dead; nor can he, as such survivor, recover the whole sum against one who had become surety that the covenantors will pay the rent.—*Lahy v. Holland*, 8 Gill 445, 50 Am. Dec. 705.

(f) Where part owners of a ship separately authorize an agent to sell it, each may have an action against him for his share of the money.—*Milburn v. Guyther*, 8 Gill 92, 50 Am. Dec. 681.

(g) Co-parceners cannot recover in separate actions against the person who had received the rent of their land as trustee, upon an implied demise, upon a count for use and occupation.—*Hoffar v. Dement*, 5 Gill 132, 46 Am. Dec. 628.

(h) A plaintiff cannot split up an entire cause of action, so as to maintain two suits upon it, without defendant's consent.—*Strike's Case*, 1 Bland 57.

**§ 54. Consolidation of actions.***Cross-References.*

Right of party in one action to intervene in another action where the actions are capable of consolidation, see ante, §§ 40-42.

Actions to enforce taxes, see "Taxation," § 645.

Appeals in highway proceedings, see "Highways," § 58.

As affecting award of costs, see "Costs," § 81.

Courts invested with jurisdiction to review order for consolidation of actions, see "Courts," § 213.

Effect on jurisdictional amount, see "Courts," § 121.

Election contests, see "Elections," § 300.

In justices' courts, see "Justices of the Peace," § 69.

Practice in federal courts, see "Courts," § 352.

Proceedings by or against executor for accounting, see "Executors and Administrators," § 472.

Proceedings in different courts of bankruptcy, see "Bankruptcy," § 19.

Proceedings relating to probate of wills, see "Wills," §§ 372, 379.

Review of discretion, see "Appeal and Error," § 964.

Review of orders as dependent on prejudicial nature of error, see "Appeal and Error," § 1046.

Suits in admiralty, see "Admiralty," § 78.

Trial of causes together, see "Trial," § 2.

**§ 55.—In general.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 56.—Power to consolidate.**

(a) The provisions of Code, art. 50, § 8, in relation to the consolidation of actions, have no application to actions instituted before a justice, and appealed.—*Presstman v. Beach*, 61 Md. 203.

(b) The consolidation of actions is within the discretion of the trial court.—*Mitchell v. Smith*, 2 Md. 271.

**§ 57.—Actions which may be consolidated.**

(a) A suit by a mortgagor for an accounting and a release of the mortgage because paid, and a suit by him to annul a deed purporting to have been executed by him and relied on by the holder of the mortgage as a defense to the first suit, are properly consolidated on motion of plaintiff to prevent a multiplicity of suits.—*Wilmer v. Placide*, 118 Md. 305, 84 Atl. 491.

(b) By the express provision of Code, art. 50, § 8, where two actions on contracts for payment of money between the same parties are brought at the same term, they are to be consolidated on motion of defendant.—*Bakhaus v. Caledonian Ins. Co.*, 112 Md. 676, 77 Atl. 310.

(c) A cause of action on contract and one for deceit in procuring execution cannot be consolidated.—*Weaver v. Shriver*, 79 Md. 530, 30 Atl. 189.

(d) Acts 1825, c. 167, and Acts 1837, c. 211 (see Code, art. 50, §§ 7, 8), relative to the consolidation of suits, apply only to actions ex contractu.—*Mitchell v. Smith*, 4 Md. 403.

(e) Several bills filed by creditors of the same estate, to subject it to their debts, may be consolidated.—*Campbell's Case*, 2 Bland 209, 20 Am. Dec. 360.

**§ 58.—Proceedings for consolidation.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 59.—Operation and effect.***Cross-References.*

Effect on number of peremptory challenges to jurors, see "Jury," § 136.

Election contests, see "Elections," §§ 296, 303.

(a) Where a suit by a building and loan association to foreclose a mortgage was consolidated with a subsequent suit by a third person to foreclose a vendor's lien on the same land, a decree rendered after the consolidation, in that portion of the suit relating to the vendor's lien, will not affect a prior decree rendered on the other branch of the case.—*Holthaus v. Nicholas*, 41 Md. 241.

**§ 60. Severance of actions.***Cross-References.*

As affecting limitations, see "Limitation of Actions," § 130.

Dismissal as to part of cause of action, see "Dismissal and Nonsuit," §§ 3, 47.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### IV. COMMENCEMENT, PROSECUTION, AND TERMINATION.

##### *Cross-References.*

- Authority of agent as to conduct of litigation, see "Principal and Agent," § 118.
- Commencement and pendency as affecting *lis pendens*, see "*Lis Pendens*," §§ 7-11.
- Commencement as fixing the time from which interest begins to run, see "*Interest*," § 47.
- Commencement of actions in justices' courts, see "*Justices of the Peace*," § 70.
- Commencement on Sunday, see "*Sunday*," § 30.
- Commencement within period of limitation, see "*Limitation of Actions*," §§ 115-138.
- Power of partner to control firm litigation, see "*Partnership*," § 149.
- Powers and duties of attorney general, see "*Attorney General*," § 7.
- Powers and duties of district and prosecuting attorneys, see "*District and Prosecuting Attorneys*," § 9.

#### § 61. Accrual of cause of action.

##### *Cross-References.*

- Action for nuisance, see "*Nuisance*," § 42.
- Action for wages, see "*Master and Servant*," § 80.
- As affecting limitations, see "*Limitation of Actions*," §§ 43-64.
- Decisions of state courts as to accrual of cause of action under statute as authority in federal courts, see "*Courts*," § 366.
- On bastardy bond, see "*Bastards*," § 89.
- On bill or note, see "*Bills and Notes*," § 445.
- On contract for sale of good will, see "*Good Will*," § 7.
- On contract to devise, see "*Wills*," § 68.
- Wrongful discharge of servant, see "*Master and Servant*," § 38.

(a) A bill alleged that certain shares of stock were transferred to the defendant W. in trust for complainants, and that thereafter W. by letter of attorney empowered C. to transfer the shares to defendant J., and that defendant J. knew at the time that the stock was trust property, but had made no return of the proceeds to complainants after demand. *Held*, that the right of action against defendant J. to recover the proceeds of the trust property accrued when the sale of stock to him was completed.—*White v. White*, 1 Md. Ch. 53.

#### § 62. Premature commencement.

##### *Cross-References.*

- Ground for abatement, see "*Abatement and Revival*," § 20.
- Of action against stockholders of insolvent banks, see "*Banks and Banking*," §§ 47, 49.
- Of action by landlord to recover taxes paid, see "*Landlord and Tenant*," § 148.
- Of action by third person against municipal contractor, see "*Municipal Corporations*," § 376.
- Of action for breach of promise to marry, see "*Breach of Marriage Promise*," § 15.
- Of action for malicious prosecution, see "*Malicious Prosecution*," § 44.
- Of action for wrongful discharge of servant, see "*Master and Servant*," § 88.
- Of action on administration bond, see "*Executors and Administrators*," § 537.
- Of action on bill or note, see "*Bills and Notes*," § 445.
- Of action on bond of county officer, see "*Counties*," § 98.
- Of action to construe will, see "*Wills*," § 699.
- Of action to enforce forfeiture of oil or gas lease, see "*Mines and Minerals*," § 78.

(a) As a rule, plaintiff's right to recover depends upon his right and title at the commencement of the suit; and he cannot recover if he then has no cause of action.—*Stonebraker v. Littleton*, 119 Md. 173, 86 Atl. 150.

#### § 63. Delay in commencing.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 64. Proceedings constituting commencement.

##### *Cross-References.*

- As abating subsequent action, see "*Abatement and Revival*," § 7.
- As affecting limitation of actions, see "*Limitation of Actions*," §§ 118, 119.
- Filing claim against decedent's estate, see "*Executors and Administrators*," § 229.
- Necessity of process for institution of action, see "*Process*," § 5.
- Of action against city for tort, see "*Municipal Corporations*," § 742.
- Of action to enforce miner's lien, see "*Mines and Minerals*," § 117.
- State laws defining what constitutes commencement of action as authority in federal courts, see "*Courts*," § 374.

(a) The time of commencing action is not extended by the filing of an amended declaration.—*Wolf v. Beuereis*, 72 Md. 481, 19 Atl. 1045, 8 L. R. A. 680.

## § 65. Rights and defenses arising after commencement of action.

### Cross-References.

See "Breach of Marriage Promise," §§ 10, 22; "Counties," § 101; "Descent and Distribution," § 91; "Executors and Administrators," §§ 120, 434, 449, 524, 537, 543, 544; "Good Will," § 6; "Indians," § 27; "Municipal Corporations," § 538; "Nuisance," §§ 35, 43; "Public Lands," § 167; "Railroads," §§ 222; "Seduction," § 9; "Taxation," §§ 586, 612, 805; "Trade-Marks and Trade-Names," § 79; "Trove and Conversion," § 38.

Appointment as executor pending action to charge as executor de son tort, see "Executors and Administrators," § 539.

Capacity of municipality to sue, see "Municipal Corporations," § 1016.

Damages accruing after commencement of action, see "Damages," §§ 157, 225; "Master and Servant," § 41.

Filing proof of appointment or taking out ancillary letters as administrator, see "Executors and Administrators," § 524.

Other publications after commencement of action for libel or slander as evidence of malice, see "Libel and Slander," § 104.

Pleading matter arising after commencement of action, see "Pleading," § 81.

Settlement by administrator pending action on bond, see "Executors and Administrators," § 537.

Tender of goods by carrier after commencement of action for conversion, see "Carriers," § 93.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 66. Course of procedure in general.

### Cross-References.

Discontinuance by omission or irregularity, see "Dismissal and Nonsuit," §§ 28, 59.

Want of prosecution ground for dismissal or nonsuit, see "Dismissal and Nonsuit," § 60.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## §§ 67, 68, 69. Stay of proceedings.

### Cross-References.

Action for damages arising from municipal improvements, see "Municipal Corporations," § 404.

Application for order, see "Motions," § 9.

Of entry and enforcement of judgments to enforce mechanics' liens, see "Mechanics' Liens," § 291.

On appeal or writ of error, see "Appeal and Error," §§ 458-492; "Justices of the Peace," § 163.

Probate and contest of wills, see "Wills," § 368.

Proceedings against insolvent debtor, see "Insolvency," § 145.

Sale on foreclosure of mortgage, see "Mortgages," § 504.

Postponement of decision on appeal, see "Appeal and Error," § 1100.

Suspension by one court of proceedings of another, see "Courts," § 479.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 70. Abandonment.

### Cross-References.

Action before justice of the peace, see "Justices of the Peace," § 36.

Application for appointment of administrator, see "Executors and Administrators," § 20.

As affecting award of costs, see "Costs," § 46.

Effect of proving claim against insolvent corporation, see "Corporations," § 565.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 71. Termination.

### Cross-References.

As affecting lis pendens, see "Lis Pendens," § 11.

Element of cause of action for malicious prosecution, see "Malicious Prosecution," §§ 34-37.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

# ACTION ON THE CASE.

## Scope-Note.

[INCLUDES actions of trespass on the case, as distinguished from other forms of action; nature and scope of remedy in general; grounds of such actions and defenses thereto; by and against whom they may be maintained; proceedings therein.

[EXCLUDES particular classes of liabilities on which actions may be maintained (see "Negligence"; "Fraud"; and other specific heads); and distinction between forms of action (see "Action"), and election between remedies (see "Election of Remedies"). For complete list of matters excluded, see cross-references, post.]

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.



*Analysis.*

- § 1. Nature and grounds of action.
- § 2. Persons entitled to sue.
- § 3. Persons liable.
- § 4. Pleading.
- § 5. Evidence.
- § 6. Trial, judgment, and review.

*Cross-References.*

- Amendment of verdict, see "Trial," § 340.  
 Application of general statute of limitation, see "Limitation of Actions," §§ 18, 30.  
 As remedy against master for injuries by act of servant, see "Master and Servant," § 325.  
 As remedy against sheriff for act of deputy, see "Sheriffs and Constables," § 127.  
 As remedy against tax assessor for improper assessment, see "Taxation," § 323.  
 As remedy for breach of contract of sale, see "Vendor and Purchaser," § 342.  
 As remedy for breach of duty by bailee, see "Bailment," § 25.  
 As remedy for breach of duty by mortgagee of chattels, see "Chattel Mortgages," § 176.  
 As remedy for breach of duty by national bank officers, see "Banks and Banking," § 254.  
 As remedy for conspiracy, see "Conspiracy," § 15.  
 As remedy for failure to satisfy judgment of record, see "Judgment," § 896.  
 As remedy for illegally bringing pauper into town, see "Paupers," § 34.  
 As remedy for injuries arising from unlawful assessment for taxation, see "Taxation," § 323.
- As remedy for injuries caused by negligence, see "Negligence," § 102.  
 As remedy for injuries to property from operation of railroad, see "Railroads," § 222.  
 As remedy for malicious prosecution, see "Malicious Prosecution," § 38.  
 As remedy for nuisance, see "Nuisance," § 41.  
 As remedy for recovery of damages for libel or slander, see "Libel and Slander," § 68.  
 As remedy for recovery of taxes, see "Taxation," § 584.  
 As remedy for trespasses by animals, see "Animals," § 100.  
 Entry and record of verdict, see "Trial," § 342.  
 Form of action as affecting limitations applicable, see "Limitation of Actions," § 18.  
 Joinder of causes of action, see "Action," § 41.  
 Jurisdiction of justices of the peace, see "Justices of the Peace," § 38.  
 Recovery for hire of horse in action on the case for overdriving it, see "Animals," § 27.  
 Removal of cause from state to federal court, see "Removal of Causes," § 75.

**§ 1. Nature and grounds of action.***Cross-Reference.*

Distinction between forms of action in general, see "Action," §§ 27, 30.

(a) Case will lie against a railroad company, whose right of way was acquired on the condition that it should maintain and keep in repair certain fences, for injuries resulting from neglect to perform the obligation.—Philadelphia, W. & B. R. Co. v. Constable, 39 Md. 149. [Cited and annotated in 21 L. R. A. 260, on liability for setting fires which spread to property of others.]

(b) When an injury is effected by regular process of a court of competent jurisdiction, case is the proper remedy, though the process may have been maliciously adopted.—Warfield v. Walter, 11 G. & J. 80.

(c) Case is the proper remedy against one who maliciously procures an execution against the person to be issued, and causes another to be arrested upon it.—Turner v. Walker, 3 G. & J. 377, 22 Am. Dec. 329. [Cited and annotated in 18 L. R. A. (N. S.) 53, 63, 67, on advice of counsel as defense to action for malicious prosecution.]

(d) Case is the proper remedy for entering plaintiff's close and erecting thereon a wall by which plaintiff was prevented from using water in a well in which he had the right of use.—Schafer v. Smith, 7 H. & J. 67. [Cited and annotated in 53 L. R. A. 627, on extent of trespasser's liability for consequential injuries.]

(e) An action on the case will lie for a consequential injury sustained by the plaintiff, when both an immediate and conse-

quential injury are alleged, as when a servant of the defendant, by his express directions, rode the plaintiff's mare several miles through different farms, and turned her out, whereby he lost her services for many days, the mare being found in the defendant's close; the court holding that the defendant could justify nothing further than a removal of the animal from his premises.—*Knott v. Digges*, 6 H. & J. 230.

(f) Case is the proper form of action to recover damages for obstructions made on a private way by defendant, after the time at which the title of the plaintiff for the road became vested, though plaintiff had not removed the obstructions that existed at the time he acquired his interest.—*Wright v. Freeman*, 5 H. & J. 467. [*Cited and annotated in 22 L. R. A. 536, on easements of light, air and prospect; in 26 L. R. A. 449, on abandonment of highway by non-user, or otherwise than by act of authorities; in 22 L. R. A. (N. S.) 882, 884, 889, on abandonment or loss of private way by non-user or improvements inconsistent with use.*]

## § 2. Persons entitled to sue.

## § 3. Persons liable.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 4. Pleading.

(a) In an action of trespass on the case, one count disclosed injuries for which damages were recoverable in trespass, the other for which they were recoverable in case, and part of the proof sustained the latter count. *Held*, that a prayer which required the court to treat all the injuries complained of as resulting in damages recoverable in trespass, and not in case, is erroneous, and was properly rejected.—*Scott v. Bay*, 3 Md. 431.

## § 5. Evidence.

(a) In an action for injuries to lands, if the defendant does not take defense on a warrant of survey, the plaintiff need not ask for a warrant to locate the premises, but may read his title papers in evidence, without plans, and prove the injury by oral testimony.—*Addison v. Hack*, 2 Gill 221, 41 Am. Dec. 421.

## § 6. Trial, judgment, and review.

### Cross-References.

Amendment of verdict, see "Trial," § 340.

Entry and record of verdict, see "Trial," § 342.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## ACTIVE TRUSTS.

### Cross-Reference.

See "Trusts," § 135.

### Annotation.

1 Words and Phrases, 150, 151.

## ACT OF BANKRUPTCY.

### Cross-Reference.

See "Bankruptcy," § 56.

### Annotation.

1 Words and Phrases, 118.

## ACT OF GOD.

### Cross-References.

Affecting liability for demurrage, see "Shipping," § 179.

Affecting liability for negligence or default in transmission or delivery of telegram, see "Telegraphs and Telephones," § 50.

Affecting liability of agistor, see "Animals," § 23.

Affecting liability of carrier for delay in transportation of goods, see "Carriers," § 99.

Affecting liability of carrier for injury to passenger, see "Carriers," § 285.

Affecting liability of carrier for loss of or injury to live stock, see "Carriers," §§ 215, *et seq.*

Affecting liability of carrier for loss of or injury to goods, see "Carriers," § 119.

Affording defense for breach of promise to marry, see "Breach of Marriage Promise," § 13.

As proximate cause of injury, see "Negligence," § 63.

Excuse for nonperformance of contract, see "Contracts," § 303.

Excusing nonperformance of contract of transportation, see "Carriers," § 64.

Injuries from electric current, see "Electricity," § 16.

Justifying refusal of carrier to receive goods, see "Carriers," § 39.

Liability for injuries caused by accidental explosions, see "Explosions," § 8.

Liability of railroad company for injuries to property from spread of fire, see "Railroads," § 465.

Loss of passenger's baggage, see "Carriers," § 402.

Master's liability for injuries to servant, see "Master and Servant," § 139.

Preventing performance of contract of carriage, see "Shipping," § 165.

### Annotation.

1 Words and Phrases, 118-126.

**ACT OF INSOLVENCY.***Cross-Reference.*

See "Insolvency," § 25.

*Annotation.*

1 Words and Phrases, 126.

**ACT OF OWNERSHIP.***Cross-Reference.*

Element of adverse possession, see "Adverse Possession," §§ 16, 88.

*Annotation.*

1 Words and Phrases, 127.

**ACTS.***Cross-Reference.*

See "Statutes."

*Annotation.*

1 Words and Phrases, 117, 118.

**ACTUAL CONTROVERSY.***Cross-References.*

Requisite to action, see "Action," §§ 8, 9.  
Requisite to appeal, see "Appeal and Error," §§ 19, 781.

**ACTUAL POSSESSION.***Cross-References.*

See "Adverse Possession," §§ 14-27.  
Conveyances of lands in possession of third person, see "Champerty and Maintenance," § 7.  
Necessity of change of possession as against creditors of grantor, see "Chatel Mortgages," § 185; "Fraudulent Conveyances," §§ 131-154.

*Annotation.*

1 Words and Phrases, 165-167.

**ACTUAL TOTAL LOSS.***Cross-Reference.*

Under marine insurance policy, see "Insurance," § 468.

*Annotation.*

1 Words and Phrases, 169-170.

**ADDITION.***Cross-References.*

See "Accession."  
Accretion to land, see "Navigable Waters," §§ 42, 44; "Waters and Water Courses," §§ 93, 111.

*Annotation.*

1 Words and Phrases, 175-177.

**ADDITIONAL ALLOWANCES.***Cross-References.*

In general, see "Costs," §§ 163-166.  
Allowance additional to dower or other interest of surviving wife, husband, or child, see "Executors and Administrators," § 179.  
To executor or administrator, see "Executors and Administrators," § 497.  
To trustee, see "Trusts," § 317.

*Annotation.*

1 Words and Phrases, 177-178.

**ADDITIONAL ASSIGNMENTS.***Cross-Reference.*

Of errors, see "Criminal Law," § 1129.

**ADDITIONAL BURDEN.***Cross-Reference.*

See "Eminent Domain," §§ 117-120.

**ADDRESS.***Cross-References.*

Of plaintiff or attorney in process, see "Process," § 40.  
Mailing notice of nonpayment and protest, see "Bills and Notes," § 421.  
Of depositions, see "Depositions," § 77.

*Annotation.*

1 Words and Phrases, 178.

**ADEMPTION.***Cross-Reference.*

Of legacy or devise, see "Wills," §§ 764-771.

*Annotation.*

1 Words and Phrases, 179-181.

**ADEQUATE REMEDY AT LAW.***Cross-References.*

Affecting right to receiver pending foreclosure of mortgage, see "Mortgages," § 467.  
Effect on jurisdiction of equity, see "Cancellation of Instruments," §§ 9-16; "Creditors' Suit," §§ 3-6; "Equity," §§ 46-48; "Injunction," §§ 16-18; "Judgment," § 408; "Quieting Title," § 4; "Reformation of Instruments," § 3; "Specific Performance," § 5.  
Effect on jurisdiction of federal courts in equity, see "Courts," § 262.

**AD FILUM.***Cross-Reference.*

See "Boundaries," §§ 12-18.

## ADJOINING LANDOWNERS.

### *Scope-Note.*

[INCLUDES mutual rights, duties, and liabilities of proprietors of adjoining lands arising from or incident to the contiguity of their lands, merely; as, in respect of ownership of trees, etc., on boundaries; lateral support, excavations, embankments, and structures affecting the adjoining land; encroachments; obstructions of access of light or air, or of view.

[EXCLUDES easements (see "*Easements*"), and rights and liabilities in respect of boundaries (see "*Boundaries*" ), fences (see "*Fences*"), party walls (see "*Party Walls*"), mines (see "*Mines and Minerals*"), and surface and subterranean waters (see "*Waters and Water Courses*"). For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

- § 1. Nature of mutual rights and duties.
- § 2. Lateral support.
- § 3. — Land in natural state.
- § 4. — Buildings and other structures.
- § 5. Trees and plants on or near boundary.
- § 6. Excavations, embankments, and structures affecting adjoining land.
- § 7. Negligence as to premises affecting adjoining land.
- § 8. Use of premises affecting adjoining land.
- § 9. Encroachments.
- § 10. Right to and obstruction of light, air, or view.

### *Cross-References.*

- |  |  |
|--|--|
| <p>See "<i>Boundaries</i>"; "<i>Fences</i>"; "<i>Party Walls</i>."</p> <p>Abatement of nuisance by act of adjoining landowner, see "<i>Nuisance</i>," § 20.</p> <p>Care as to persons on adjacent premises, see "<i>Negligence</i>," § 84.</p> <p>Declarations as to boundaries, see "<i>Evidence</i>," § 274.</p> <p>Establishment of drains, see "<i>Drains</i>," §§ 22, 23.</p> <p>Falling of party walls, see "<i>Party Walls</i>," § 8.</p> <p>Fences along railroad right of way, see "<i>Railroads</i>," §§ 103-105.</p> <p>Liability of building and loan association,</p> | <p>see "<i>Building and Loan Associations</i>," §§ 40, 41.</p> <p>Master's liability for injuries to servant from defects in adjoining premises, see "<i>Master and Servant</i>," § 300.</p> <p>Rainwater and eaves-drop, see "<i>Waters and Water Courses</i>," § 121.</p> <p>Rights of abutting owners as to construction of telegraph or telephone systems in streets and roads, see "<i>Telegraphs and Telephones</i>," § 10.</p> <p>Use of steam on adjoining premises, see "<i>Steam</i>," § 6.</p> <p>Work of independent contractor, see "<i>Master and Servant</i>," §§ 319, 322.</p> |
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### § 1. Nature of mutual rights and duties.

(a) N. conveyed a lot to G., described as beginning at a given point, and running west 19 feet 6 inches, etc. The deed provided that the grantee should have the right to build against the brick house on the west side of the lot. Subsequently N. conveyed the lot adjoining on the west to J., describing it as beginning at the west corner of the house on the lot conveyed to G. *Held*,

that as, under the express terms of the deed to G., his lot did not extend beyond the face of the east wall of the house referred to in the deed, he had no right to the use of such wall as a support for his building.—*Moore v. Rayner*, 58 Md. 411.

### § 2. Lateral support.

#### *Cross-References.*

- See "*Railroads*," § 114.
- Construction of railroad, see "*Railroads*," § 113.

In respect to highway, see "Highways," § 84.

Liabilities of municipal corporations, see "Municipal Corporations," § 733.

Power of city to make regulations, see "Municipal Corporations," § 601.

Work of independent contractor, see "Master and Servant," §§ 319, 322.

#### Annotation.

Effect of destruction of building to terminate adjoining owner's easement of support.—19 L. R. A. (N. S.) 883, note.

Right to remove lateral support by dredging water bed.—64 L. R. A. 275, note.

Condemnation or grant of land for railroad right of way as carrying right to lateral and subjacent support.—32 L. R. A. (N. S.) 155, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 3.—Land in natural state.

#### Annotation.

Liability for removal of lateral or subjacent support of land in its natural condition.—68 L. R. A. 673, note.

(a) The owner of a lot bounding on a street is entitled, as against third persons, to the natural support afforded by the bed of the street.—*Baltimore & P. R. Co. v. Reaney*, 42 Md. 117. [Cited and annotated in 36 L. R. A. (N. S.) 689, on abutter's right to compensation for railroads in streets; in 21 L. R. A. (N. S.) 319, on liability for removal of lateral support in constructing railroad; in 6 L. R. A. (N. S.) 243, on liability for negligent removal of lateral support injuring buildings; in 1 L. R. A. (N. S.) 68, on effect of legislative authority on liability for private nuisance; in 68 L. R. A. 687, 690, 699, on liability for removal of lateral or subjacent support; in 52 L. R. A. 448, on liability of street-railway company for defect in track or street.]

### § 4.—Buildings and other structures.

#### Cross-References.

Accrual of right of action, see "Limitation of Action," § 55.

License to enter on adjoining premises, see "Licenses," § 48.

#### Annotation.

Liability for injuries to buildings on adjoining land by negligent removal of lateral support of the soil.—6 L. R. A. (N. S.) 243, note.

Right by prescription to lateral support for buildings.—20 L. R. A. 730, note.

(a) The length of lagging used in a trench to prevent the falling of a nearby house and the nature of the soil may be shown, though more than a year has elapsed since the trench was dug and filled, where the lagging was covered with cobblestones, and it was probable it had remained in the same condition; the weight of the evidence being for the jury.—*Whiting-Middleton Const. Co. v. Preston*, 121 Md. 210, 88 Atl. 110.

(b) In an action for damages on account of the falling of a house, due to the digging of a trench close by, an instruction that there was no evidence sufficient to put the burden of propping, shoring, and needling the house on defendant was misleading, as the duty would depend on conditions.—*Ibid.*

(c) The right of lateral support exists only to the soil in its natural condition, but the erection of a building does not destroy the right of support to the soil itself, and there is no right of action for unavoidable injury not caused by negligence or unskillfulness, and which would not have occurred if there had been no building on the land, but negligence resulting in injury is actionable whether the land is built on or not.—*Hanrahan v. City of Baltimore*, 114 Md. 517, 80 Atl. 312.

(d) A lot owner who is about to excavate his lot, which is in proximity to the wall of an adjoining house, giving reasonable notice thereof to the owner of the house to protect his property, is not liable for injury thereto on failure of the owner of the house to comply with the notice, where the excavation is made with ordinary care.—*Serio v. Murphy*, 99 Md. 545, 58 Atl. 485, 105 Am. St. Rep. 316. [Cited and annotated in 42 L. R. A. (N. S.) 778, on liability of landlord for damages to tenant in consequence of acts of third persons.]

(e) The owner of a lot, which he desired to excavate, gave notice of his intention to an adjoining owner on whose lot there was a building, the walls of which would be endangered by the excavation, and the adjoining owner employed a third person to do the work of protecting the house. *Held*, that the fact that the walls of the house

were cracked while the work of protecting it was in progress would not render the owner of the excavated lot liable for the injury.—*Serio v. Murphy*, 99 Md. 545, 58 Atl. 435, 105 Am. St. Rep. 316. [*Cited and annotated in 42 L. R. A. (N. S.) 778, on liability of landlord for damages to tenant in consequence of acts of third persons.*]

(f) In an action by a tenant for damages for injury to the walls of the house he was occupying in excavating an adjacent lot there can be no recovery in the absence of proof of negligence in the work of excavation.—*Serio v. Murphy*, 99 Md. 545, 58 Atl. 435, 105 Am. St. Rep. 316. [*Cited and annotated in 42 L. R. A. (N. S.) 778, on liability of landlord for damages to tenant in consequence of acts of third persons.*]

(g) In an action by a tenant for damages for injury to the walls of the house occupied by him by an excavation of the lot adjacent thereto, evidence examined, and held insufficient to show negligence on the part of the person under whose supervision the work was being done.—*Serio v. Murphy*, 99 Md. 545, 58 Atl. 435, 105 Am. St. Rep. 316. [*Cited and annotated in 42 L. R. A. (N. S.) 778, on liability of landlord for damages to tenant in consequence of acts of third persons.*]

(h) The mere fact that the wall of a house cracked while the work of excavating an adjacent lot was in progress raises no presumption of negligence by the person under whose supervision the work was being done.—*Serio v. Murphy*, 99 Md. 545, 58 Atl. 435, 105 Am. St. Rep. 316. [*Cited and annotated in 42 L. R. A. (N. S.) 778, on liability of landlord for damages to tenant in consequence of acts of third persons.*]

(i) One under whose supervision the work of excavation of a lot adjacent to a building is being done is bound to use only reasonable and ordinary care to prevent injury to the building therefrom.—*Serio v. Murphy*, 99 Md. 545, 58 Atl. 435, 105 Am. St. Rep. 316. [*Cited and annotated in 42 L. R. A. (N. S.) 778, on liability of landlord for damages to tenant in consequence of acts of third persons.*]

(j) A lot owner tore down buildings, and excavated for new foundations along the division line, and in the rear of his neighbor's house, below its foundation, and left the work in this condition for two months, when he excavated adjoining the house, and weakened its foundation. Held, that the adjoining lot owner could not be presumed to know the character and extent of the proposed work at a time before the work was resumed opposite his house.—*Bonaparte v. Wiseman*, 89 Md. 12, 42 Atl. 918, 44 L. R. A. 482. [*Cited and annotated in 65 L. R. A. 850, on liability for injuries from independent contractor's failure to take necessary precautions; in 6 L. R. A. (N. S.) 243, on liability for damages for negligent removal of lateral support injuring buildings.*]

(k) The question whether the injury caused by an adjoining landowner's excavating his lots below the foundations of plaintiff's house could have been reasonably anticipated is for the jury.—*Bonaparte v. Wiseman*, 89 Md. 12, 42 Atl. 918, 44 L. R. A. 482. [*Cited and annotated in 65 L. R. A. 850, on liability for injuries from independent contractor's failure to take necessary precautions; in 6 L. R. A. (N. S.) 243, on liability for negligent removal of lateral support injuring buildings.*]

(l) In an action for damages caused by excavating land, whereby an adjoining owner's house fell, if such house was so weak that it could not stand the reasonable improvement of defendant's property, conducted with skill and care, any injury caused thereby would be *damnum absque injuria*.—*Shafer v. Wilson*, 44 Md. 268. [*Cited and annotated in 52 L. R. A. 47, 50, on lost profits from tort as damages.*]

(m) A railroad company excavating a street, though under authority from the city, is liable for injuries to the property of an adjoining owner due to the removal of lateral support.—*Baltimore & P. R. Co. v. Reaney*, 42 Md. 117. [*Cited and annotated in 52 L. R. A. 448, on liability of street railway company for defect in track or street; in 68 L. R. A. 687, 690, 699, on liability for removal of lateral or subjacent support; in 1 L. R. A. (N. S.) 68, on*

effect of legislative authority on liability for private nuisance; in 6 L. R. A. (N. S.) 243, on liability for negligent removal of lateral support injuring buildings; in 21 L. R. A. (N. S.) 319, on liability for removal of lateral support in constructing railroad; in 36 L. R. A. (N. S.) 689, on abutter's right to compensation for railroads in streets.]

(n) When one is negligent in making an excavation on his own ground, he is liable for injuries resulting to a building on the adjoining lot.—*Baltimore & P. R. Co. v. Reaney*, 42 Md. 117. [*Cited and annotated* in 52 L. R. A. 448, on liability of street-railway company for defect in track or street; in 68 L. R. A. 687, 690, 699, on liability for removal of lateral or subjacent support; in 1 L. R. A. (N. S.) 68, on effect of legislative authority on liability for private nuisance; in 6 L. R. A. (N. S.) 243, on liability for negligent removal of lateral support injuring buildings; in 21 L. R. A. (N. S.) 319, on liability for removal of lateral support in constructing railroad; in 36 L. R. A. (N. S.) 689, on abutter's right to compensation for railroad in streets.]

(o) In an action against an adjoining owner for carelessly digging too near the division wall while deepening his cellar, the plaintiff was entitled to recover such damages as would be sufficient to reinstate the wall and the house in as good condition as they were prior to the injury, and to compensate him for the loss consequent upon the interruption of his business.—*Brown v. Werner*, 40 Md. 15. [*Cited and annotated* in 18 L. R. A. (N. S.) 132, on acquisition by prescription of party-wall easement in common division wall; in 65 L. R. A. 850, on liability for injuries from independent contractor's failure to take necessary precautions; in 52 L. R. A. 50, on lost profits from tort as damages.]

#### § 5. Trees and plants on or near boundary.

##### *Cross-Reference.*

On railroad right of way, see "Railroads," § 73.

##### *Annotation.*

Liability for spread of weeds or noxious vegetation to adjoining premises.—52 L. R. A. 293, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial

and Key Number Digests, and references therein to Century Digest.

#### § 6. Excavations, embankments, and structures affecting adjoining land.

##### *Cross-References.*

Disturbance of lateral support, see ante, § 3.

Fences obstructing light, air and view, see post, § 10.

Accrual of right of action, see "Limitation of Actions," § 55.

Conformity of judgment to pleadings, see "Judgment," § 250.

Violation of municipal ordinance, see "Municipal Corporations," § 631.

##### *Annotation.*

Liability for injury to person by falling of adjoining walls or buildings.—34 L. R. A. 560, note.

(a) The owner of a lot bounding on a street is entitled, as against third persons to the natural support afforded by the bed of the street.—*Baltimore & P. R. Co. v. Reaney*, 42 Md. 117.

(b) A railroad company excavating a street, though under authority from the city, is liable for injuries to the property of an adjoining owner due to the removal of lateral support.—*Baltimore & P. R. Co. v. Reaney*, 42 Md. 117. [*Cited and annotated* in 52 L. R. A. 448, on liability of street railway company for defect in track or street; in 68 L. R. A. 687, 690, 699, on liability for removal of lateral or subjacent support; in 1 L. R. A. (N. S.) 68, on effect of legislative authority on liability for private nuisance; in 6 L. R. A. (N. S.) 243, on liability for negligent removal of lateral support injuring buildings; in 21 L. R. A. (N. S.) 319, on liability for removal of lateral support in constructing railroads; in 36 L. R. A. (N. S.) 689, on abutter's right to compensation for railroads in streets.]

#### § 7. Negligence as to premises affecting adjoining land.

(a) Where there has been no valid division according to law of the line between adjoining lots for the maintenance of a partition fence, the owner of each lot is bound to keep his cattle from crossing the line.—*Richardson v. Milburn*, 11 Md. 340. [*Cited and annotated* in 22 L. R. A. 62, on owner's liability for trespass of cattle; in 53 L. R. A. 631, on extent of trespasser's

liability for consequential injuries; in 30 L. R. A. (N. S.) 244, on necessity and character of title or possession to sustain action of trespass; in 43 L. R. A. (N. S.) 448, on liability of landowner for damage by stock which enter upon his land and thence wander to adjoining property.]

### § 8. Use of premises affecting adjoining land.

#### Annotation.

Right of owner or occupant of neighboring property to enjoin maintenance of house of prostitution.—11 L. R. A. (N. S.) 1060; 42 L. R. A. (N. S.) 1041, notes.

Liability for injury from matter precipitated upon adjoining property.—86 L. R. A. (N. S.) 1171, note.

Liability in absence of negligence for damages from substance thrown in blasting.—34 L. R. A. (N. S.) 211, note.

Right of one who pumps oil, gas, or water on his premises to enjoin similar acts of his neighbor.—30 L. R. A. (N. S.) 1057, note.

Driving foul air against neighbor's windows as nuisance.—9 L. R. A. (N. S.) 695, note.

(a) Where a person maintains a rock quarry on his premises, and the working of it occasions injuries to his neighbor, it is no defense to an action for the injury that proper precautions were taken to prevent the resultant injuries.—*Scott v. Bay*, 3 Md. 431. [Cited and annotated in 34 L. R. A. (N. S.) 212, 213, on liability, in absence of negligence, for damages to realty from substances thrown in blasting; in 37 L. R. A. 784, on power of equity to protect personal rights; in 17 L. R. A. 220, on injuries to land and buildings from blasting.]

(b) Unless a party can show a right, either in the nature of a presumed grant or easement, or in some such mode, to use his property for the working of quarries and blasting of rocks, he cannot so use it if such use occasions injury to his neighbor in the enjoyment of his legal rights and privileges.—*Scott v. Bay*, 3 Md. 431. [Cited and annotated in 37 L. R. A. 784, on power of equity to protect personal rights; in 34 L. R. A. (N. S.) 212, 213, on liability, in absence of negligence, for damages to realty from substances thrown in blasting; in 17 L. R. A. 220, on injuries to land and buildings from blasting.]

### § 9. Encroachments.

#### Cross-References.

Acts constituting trespass, see "Trespass," § 10.

Scope of remedy by injunction in general, see "Injunction," § 50.

Trivial encroachment as ground for relief in equity, see "Equity," § 84.

#### Annotation.

Effect of encroachment of building on adjoining premises on marketability of title.—38 L. R. A. (N. S.) 33, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 10. Right to and of obstruction of light, air, or view.

#### Cross-References.

By materials piled on railroad right of way, see "Railroads," § 73.

Easements, see "Easements."

(a) The fact that a lot which is overlooked by windows of a building on the adjoining lot has been vacant for over twenty years, during all of which time the building on the adjoining lot secured its light over the vacant lot, does not create any easement over such lot, preventing the owner from erecting a building which shuts up the windows of the adjoining structure.—*Cherry v. Stein*, 11 Md. 1. [Cited and annotated in 22 L. R. A. 536, 539, on easements of light, air and prospect.]

(b) Where one is owner of two adjoining lots, one of which is vacant, and the other of which has upon it a building with windows overlooking the former, and sells the latter lot without reserving a right to build on the vacant lot or to obstruct the windows in the building sold by him, *quaere*, whether he can afterwards obstruct such windows by constructing a building on the vacant lot.—*Cherry v. Stein*, 11 Md. 1.

### ADJOURNMENT.

#### Cross-References.

Continuance of civil actions, see "Continuance."

Continuance of criminal prosecutions, see "Criminal Law," §§ 578-617.

From one polling place to another, see "Elections," § 201.

Of administrator's sale, see "Executors and Administrators," § 363.

Of boards rendering mandamus not beneficial, see "Mandamus," § 16.

Of canvassing boards, see "Elections," § 259.



Of causes in justices' courts, see "Justices of the Peace," § 107.  
 Of court, see "Courts," §§ 66, 76, 189, 193, 435; "Criminal Law," § 649; "Trial," § 26.  
 Of court affecting term of service of jurors, see "Jury," § 76.  
 Of election, see "Elections," § 207.  
 Of execution sale, see "Execution," § 223.  
 Of grand jury, see "Grand Jury," § 31.  
 Of hearing by arbitrators, see "Arbitration and Award," § 33.  
 Of judicial sale of railroad, see "Railroads," § 192.  
 Of meeting of bankrupt's creditors, see "Bankruptcy," § 125.  
 Of meetings of board of education, see "Schools and School Districts," § 57.  
 Of meetings of county board, see "Counties," § 52.  
 Of preliminary examination, see "Criminal Law," § 230.  
 Of proceedings before referee, see "Reference," § 57.  
 Of proceedings for revocation of license, see "Intoxicating Liquors," § 108.  
 Of proceedings to establish highway, see "Highways," § 33.  
 Of sale of land for taxes, see "Taxation," § 663.  
 Of sale on foreclosure of mortgage, see "Mortgages," §§ 357, 511.  
 Of school board meeting, see "Schools and School Districts," § 57.  
 Of stockholders' meetings, see "Corporations," § 193.  
 Of taking of depositions, see "Depositions," § 62.

**Annotation.**

1 Words and Phrases, 190, *et seq.*

**ADJUDICATION.**

**Cross-References.**

Effect of allowance of claim against bankrupt's estate, see "Bankruptcy," § 341.  
 In involuntary bankruptcy proceedings, see "Bankruptcy," § 100.  
 In involuntary insolvency proceedings, see "Insolvency," § 37.  
 In voluntary bankruptcy proceedings, see "Bankruptcy," § 51.  
 Of courts in general, see "Courts," §§ 87-117.  
 Of insolvency of decedent's estate, see "Executors and Administrators," § 410.  
 On inquisitions of lunacy, see "Insane Persons," § 26.  
 Operation and effect of former adjudication, see "Judgment," §§ 540-751.

**Annotation.**

1 Words and Phrases, 193.

**ADJUSTMENT.**

**Cross-References.**

Of accounts between county and state, see "Counties," § 156.  
 Of accounts between municipal corporation and county, see "Municipal Corporations," § 882.

Of accounts between municipal corporation and state, see "Municipal Corporations," § 882.  
 Of claims against United States, see "United States," § 113.  
 Of claims and equities between parties in partition, see "Partition," §§ 81-90.  
 Of controversy by parties, see "Accord and Satisfaction"; "Compromise and Settlement."  
 Of general average contributions, see "Shipping," § 199.  
 Of loss under insurance policy, see "Insurance," §§ 562-579.  
 Of pre-existing rights and liabilities on alteration of counties, see "Counties," § 16.  
 Of pre-existing rights and liabilities on alteration of municipal corporations, see "Municipal Corporations," § 36.  
 Of pre-existing rights and liabilities on alteration of school districts, see "Schools and School Districts," § 41.  
 Of pre-existing rights and liabilities on alteration of towns or township, see "Towns," § 11.

**Annotation.**

1 Words and Phrases, 195.

**ADMEASUREMENT OF DOWER.**

**Cross-Reference.**

See "Dower," §§ 54-118.

**ADMINISTRATION.**

**Cross-References.**

Of charity, see "Charities," §§ 31-50.  
 Of estate assigned for benefit of creditors, see "Assignments for benefit of Creditors," §§ 215-283.  
 Of estate of bankrupt, see "Bankruptcy," §§ 219-276.  
 Of estate of deceased lunatic, see "Insane Persons," § 44.  
 Of estate of decedent, see "Executors and Administrators."  
 Of estate of insolvent, see "Insolvency," § 73.  
 Of estate of ward, see "Guardian and Ward," §§ 32-35, 37-39, 41-46, 48-51, 53-59, 61, 62, 64-70, 73.  
 Of oath as affecting liability for perjury, see "Perjury," §§ 10, 23.  
 Of property by receiver, see "Banks and Banking," §§ 77-81; "Building and Loan Associations," § 42; "Corporations," §§ 561-568; "Mortgages," § 473; "Receivers," §§ 81-109.  
 Of property of community on death of husband or wife, see "Husband and Wife," § 276.  
 Of public finances, see "Counties," §§ 149-196; "Municipal Corporations," §§ 879, 880, 882, 884-887; "Schools and School Districts," §§ 92-94; "States," §§ 121, 123, 124, 126, 127; "Territories," § 29.  
 Of school funds, see "Schools and School Districts," § 18.  
 Of trust property, see "Trusts," §§ 171-269.

**Annotation.**

1 Words and Phrases, 197.

# ADMIRALTY.

## *Scope-Note.*

[INCLUDES administration of the maritime law, general or local, as a distinct system of jurisprudence, by courts of admiralty; nature, grounds, limits, and subjects of jurisdiction of admiralty in general; and procedure peculiar to suits in admiralty.

[EXCLUDES jurisdiction of courts of admiralty and its exercise over particular subjects (see "*Shipping*"; "*Seamen*"; "*Pilots*"; "*Towage*"; "*Wharves*"; "*Insurance*"; "*Navigable Waters*"; "*Collision*"; "*Maritime Liens*"; "*Salvage*"; and "*Criminal Law*"); and organization and general conduct of business of courts of admiralty (see "*Courts*"). For complete list of matters excluded, see cross-references, post.]

## *Analysis.*

### **I. Jurisdiction.**

- § 1. Nature, grounds, and scope in general.
- § 2. Saving of common-law remedy.
- § 3. Conflict of jurisdiction as to the res.
- § 4. Waters, places, and voyages.
- § 5. Persons.
- § 6. Vessels and other property.
- § 7. Rights and controversies in general.
- § 8. Ownership and possession of vessels.
- § 9. Contracts.
- § 10. — Maritime contracts in general.
- § 11. — Shipbuilding contracts.
- § 12. — Hire or employment of vessel and contracts of carriage and storage.
- § 13. — Services.
- § 14. — Repairs and supplies.
- § 15. — Mortgages, bottomry, and hypothecation.
- § 16. **Liens.**
- § 17. Torts.
- § 18. — Maritime torts in general.
- § 19. — Injuries to vessels or other property.
- § 20. — Personal injuries.
- § 21. — Causing death.
- § 22. — Torts partly committed or causing damage on land or non-navigable waters.
- § 23. Penalties, forfeitures, and seizures.
- § 24. Captures and prizes.
- § 25. Making and waiver of objections to jurisdiction.

### **II. Remedies in Personam and in Rem.**

- § 26. Mode and forms of procedure in general.
- § 27. Grounds of proceeding in personam.
- § 28. Grounds of proceeding in rem.
- § 29. Proceeding in personam and in rem for same cause.
- § 30. Joinder of causes and proceedings.
- § 31. Defenses in general.
- § 32. Place of bringing suit.
- § 33. Premature commencement of suit.
- § 34. Laches and stale demands.

## ADMIRALTY.

**II. Remedies in Personam and in Rem—Continued.**

- § 35. Pendency of other proceeding.
- § 36. Set-off, counterclaim, and cross-suit.
- § 37. Consolidation and severance.
- § 38. Stay of proceedings.
- § 39. Abandonment, discontinuance, or dismissal.

**III. Parties, Process, Claims, and Stipulations or Other Security.**

- § 40. Capacity to sue or be sued in admiralty.
- § 41. Libelants.
- § 42. Defendants.
- § 43. Property subject to process.
- § 44. Process and appearance in general.
- § 45. Process in proceedings in personam.
- § 46. — Process against the person.
- § 47. — Attachment and garnishment.
- § 48. Process in proceedings in rem.
- § 50. Intervention and bringing in new parties.
- § 51. Death of party.
- § 52. Tender and payment into court.
- § 53. Custody and disposition of property pending suit.
- § 54. Bonds and stipulations in general.
- § 55. Bail.
- § 56. Security for dissolution of attachment.
- § 57. Security for release of vessel or other property.
- § 58. Security on cross-libel.

**IV. Pleading, Petitions, and Motions.**

- § 59. Allegations in general.
- § 59(a). Filing.
- § 60. Libel.
- § 61. Answer.
- § 62. Cross-libel.
- § 63. Reply.
- § 64. Interrogatories.
- § 65. Exceptions, demurrers, and special pleas in bar.
- § 66. Amended and supplemental pleadings.
- § 67. Signature and verification.
- § 68. Exhibits.
- § 69. Filing and service.
- § 70. Issues, proof, and variance.
- § 71. Defects and objections.
- § 72. Motions and proceedings thereon.

**V. Evidence, and Taking and Filing Proofs.**

- § 73. Rules of evidence and mode of proof in general.
- § 74. Pleadings as evidence.
- § 75. Answers to interrogatories.
- § 76. Depositions.
- § 77. Testimony before commissioners.

**VI. Hearing or Trial, and Decision.**

- § 78. Preliminary proceedings.

## ADMIRALTY.

**VI. Hearing or Trial, and Decision—Continued.**

- § 79. Course and conduct of hearing.
- § 80. Trial by jury.
- § 81. Decision.
- § 82. Rehearing or new trial.

**VII. Commissioners and Proceedings Before Them.**

- § 83. Reference to commissioners.
- § 84. Proceedings before commissioners.
- § 85. Report.
- § 86. Objections and exceptions to rulings and reports.
- § 87. Confirmation or recommitment of report.

**VIII. Decree and Enforcement Thereof.**

- § 88. Rendition, form, and requisites in general.
- § 89. Decrees by default or pro confesso.
- § 90. — Requisites and validity.
- § 91. — Opening or setting aside.
- § 92. Judgments on bonds or stipulations.
- § 93. Amendment, opening, or vacating.
- § 94. Libel or bill for review.
- § 95. Operation and effect of decree.
- § 96. Execution in general.
- § 97. Enforcement against property in court.
- § 98. Enforcement against sureties or stipulators.
- § 99. Sale or other disposition of property.
- § 100. Right and liabilities of purchasers.
- § 101. Disposition of proceeds or remnants.

**IX. Appeal.**

- § 102. Appellate jurisdiction.
- § 103. Decisions reviewable.
- § 104. Right of review.
- § 105. Presentation and reservation in lower court of grounds of review.
- § 106. Parties.
- § 107. Taking and perfecting appeal.
- § 108. — Time of taking proceedings.
- § 109. — Assignment of errors.
- § 110. — Petition or other proceedings for appeal.
- § 111. — Appeal bonds.
- § 112. — Citation, notice, and appearance.
- § 113. Effect of appeal.
- § 114. Stay of execution.
- § 115. Record.
- § 116. Hearing and rehearing.
- § 117. Amendments, new pleadings, and proofs, and trial of cause anew.
- § 118. Review.
- § 119. Determination and disposition of cause.
- § 120. Liabilities on appeal bonds.

**X. Costs.**

- § 121. Power to award in general.
- § 122. Parties to and against whom awarded.

**X. Costs—Continued.**

- § 123. Security for payment.
- § 124. Amount and items.
- § 125. Taxation.
- § 126. Costs on appeal.
- § 127. Payment and remedies for collection.

*Cross-References.*

See "Collision"; "Maritime Liens"; "Salvage"; "Seamen"; "Shipping"; "Towage."  
 Adjudication of prize, see "War," § 28.  
 Adoption by federal courts of practice of state courts in admiralty cases, see "Courts," § 336.  
 Appearance of state officers claiming to hold vessel under state warrant as depriving admiralty of jurisdiction of suit to recover vessel on ground that suit is against state, see "Courts," § 303.  
 Concurrent and conflicting jurisdiction of state and federal courts, see "Courts," § 493.  
 Declarations as evidence, see "Criminal Law," § 417.

Effect of division of district on jurisdiction of district court, see "Courts," § 420.  
 Interest as element of damages in admiralty, see "Damages," § 67.  
 Interference of state court with property to which jurisdiction of federal court has attached, see "Courts," § 502.  
 Jurisdiction of district court of Alaska, see "Courts," § 433.  
 Jurisdiction of offenses, see "Criminal Law," § 86.  
 Jurisdiction of state court of action for injury to bridge, see "Bridges," § 27.  
 Rule of district court as to process in rem and in personam issuing on same libel, see "Courts," § 423.

**NOTE.**

Practically no Maryland cases touching this subject are to be found in the Maryland Reports. Nevertheless, the titles and sub-titles are given as they appear in the American Digest Key Number classification, so that the investigator may at one time accomplish the double purpose of learning whether a given point has been passed upon by the Maryland Courts and also ascertain the particular place in the American Digest System where all state and federal cases upon the point will be found collected.

References to valuable notes in the L. R. A. and copious cross-references will also be found throughout the title.

**I. JURISDICTION.***Cross-References.*

Appearance of state officers claiming to hold vessels under state warrant as depriving admiralty of jurisdiction of suit to recover vessels on ground that suit is against state, see "Courts," § 303.  
 Concurrent and conflicting jurisdiction of state and federal courts, see "Courts," § 493.  
 Determination of question of jurisdiction in general, see "Courts," § 39.  
 Effect of division of district on jurisdiction of district court, see "Courts," § 420.  
 Jurisdiction of district court of Alaska, see "Courts," § 433.  
 Jurisdiction of offenses, see "Criminal Law," § 86.  
 Rule of district court as to process in rem and in personam issuing on same libel, see "Courts," § 423.

**§ 1. Nature, grounds, and scope in general.***Annotation.*

See 66 L. R. A. 193, note.

(a) The jurisdiction of state courts of admiralty was not altogether taken away

by the adoption of the federal constitution.—*Nicholson v. State*, 3 H. & McH. 109.

(b) The judge of the State Admiralty Court of Maryland was held to be entitled to recover his salary for the period of service subsequent to the adoption of the federal constitution and the organization of the admiralty courts of the federal government.—*Nicholson v. State*, 3 H. & McH. 109.

**§ 2. Saving of common-law remedy.****§ 3. Conflict of jurisdiction as to the res.***Cross-Reference.*

Interference of state court with property to which jurisdiction of federal court has attached, see "Courts," § 502.

*Annotation.*

Pendency of admiralty cases in both state and federal courts.—42 L. R. A. 462, note.

**§ 4. Waters, places, and voyages.***Annotation.*

Admiralty jurisdiction of right to fish.—60 L. R. A. 504, note.

**§ 5. Persons.****§ 6. Vessels and other property.***Cross-Reference.*

Foreign seamen against foreign vessel, see ante, § 5.

**§ 7. Rights and controversies in general.***Annotation.*

Conclusiveness of sentence of foreign court of admiralty.—20 L. R. A. 668, note.

Right to recover funeral or medical expenses of person negligently killed.—2 B. R. C. 714, note.

Right to interest on unliquidated damages.—28 L. R. A. (N. S.) 7, 80, note.

**§ 8. Ownership and possession of vessels.****§ 9. Contracts.***Cross-Reference.*

Grounds for proceeding in rem, see post, § 28.

*Annotation.*

Jurisdiction of contracts.—66 L. R. A. 193, note.

**§ 10.—Maritime contracts in general.***Annotation.*

Admiralty jurisdiction of insurance and average.—66 L. R. A. 234, note.

**§ 11.—Shipbuilding contracts.***Annotation.*

Admiralty jurisdiction of contracts for building and outfitting ships.—66 L. R. A. 216, note.

**§ 12.—Hire or employment of vessel and contracts of carriage and storage.***Annotation.*

Admiralty jurisdiction of charter parties and carriage contracts.—66 L. R. A. 223, note.

**§ 13.—Services.***Cross-References.*

As affected by nationality of party, see ante, § 5.

In building ship, see ante, § 11.

*Annotation.*

Admiralty jurisdiction of contracts for services in use or operation of vessel.—66 L. R. A. 226, note.

Admiralty jurisdiction of contracts of stevedores and watchmen.—66 L. R. A. 229, note.

(a) The crew of a steamboat plying between the ports of adjoining states upon navigable tide waters have a right to proceed for wages due them by libel in the district court of the United States.—Abbott

v. Baltimore & R. Steam-Packet Co., 1 Md. Ch. 542. [Cited and annotated in 66 L. R. A. 227, on admiralty jurisdiction of contracts; in 70 L. R. A. 377, on what contracts will support maritime lien.]

**§ 14.—Repairs and supplies.****§ 15.—Mortgages, bottomry, and hypothecation.***Cross-Reference.*

Suit by mortgagee for possession, see ante, § 8.

*Annotation.*

Admiralty jurisdiction of bottomry, hypothecation, mortgage.—66 L. R. A. 233, note.

**§ 16. Liens.***Cross-Reference.*

Enforcement in admiralty of maritime liens in general, see "Maritime Liens," §§ 56, 57.

**§ 17. Torts.***Cross-References.*

See ante, § 10.

Discretion to decline jurisdiction when parties are foreigners, see ante, § 5.

Grounds for proceedings in rem, see post, § 28.

On particular waters, see ante, § 4.

Jurisdiction of state court of action for injury to bridge, see "Bridges," § 27.

**§ 18.—Maritime torts in general.***Annotation.*

Jurisdiction of action growing out of collision with bridge.—21 L. R. A. (N. S.) 324, note.

Right to sue in admiralty for damages resulting from injury to another.—42 L. R. A. (N. S.) 640.

**§ 19.—Injuries to vessels or other property.****§ 20.—Personal injuries.***Cross-Reference.*

As affected by nationality of person injured, see ante, § 5.

**§ 21.—Causing death.***Cross-Reference.*

As affected by waters in which vessel was at time of injury, see ante, § 4.

*Annotation.*

Right to recover funeral or medical expenses of person negligently killed.—2 B. R. C. 714, note.

**§ 22.—Torts partly committed or causing damage on land or non-navigable waters.****§ 23. Penalties, forfeitures, and seizures.**

(a) The commissions of the crown gave the courts which were established a most

ample jurisdiction over all maritime contracts, and over torts and injuries, as well in ports as upon the high seas; and acts of Parliament enlarged, or rather recognized, this jurisdiction, by giving or confirming cognizance of all seizures for contraventions of the revenue laws.—Hastings v. Plater, 1 Bland 613, note.

§ 24. Captures and prizes.

§ 25. Making and waiver of objections to jurisdiction.

## II.—REMEDIES IN PERSONAM AND IN REM.

### *Cross-Reference.*

Rule of admiralty court as to process in rem and in personam issuing on same libel, see "Courts," § 423.

No paragraphs under this sub-division. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 26. Mode and forms of procedure in general.

§ 27. Grounds of proceeding in personam.

§ 28. Grounds of proceeding in rem.

§ 29. Proceeding in personam and in rem for same cause.

§ 30. Joinder of causes and proceedings.

### *Cross-Reference.*

Waiver of objections, see post, § 71.

§ 31. Defenses in general.

§ 32. Place of bringing suit.

§ 33. Premature commencement of suit.

§ 34. Laches and stale demands.

### *Cross-Reference.*

Affecting right to enforce appeal bond, see post, § 120.

§ 35. Pendency of other proceedings.

§ 36. Set-off, counterclaim, and cross-suit.

### *Cross-Reference.*

Necessity for cross-libel in order to recoup, see post, § 62.

§ 37. Consolidation and severance.

§ 38. Stay of proceedings.

§ 39. Abandonment, discontinuance, or dismissal.

## III. PARTIES, PROCESS, CLAIMS, AND STIPULATIONS OR OTHER SECURITY.

### *Cross-References.*

Parties to suit for collision, see "Collision," § 116.

Parties to suits for salvage, see "Salvage," § 46.

Rule of district court as to process, see "Courts," § 423.

No paragraphs under this sub-division. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 40. Capacity to sue or be sued in admiralty.

§ 41. Libelants.

§ 42. Defendants.

§ 43. Property subject to process.

§ 44. Process and appearance in general.

§ 45. Process in proceedings in personam.

§ 46.—Process against the person.

§ 47.—Attachment and garnishment.

§ 48. Process in proceedings in rem.

§ 49. (Omitted from the classification used herein.)

§ 50. Intervention and bringing in new parties.

### *Cross-Reference.*

To determine rights to proceeds, see post, § 101.

§ 51. Death of party.

§ 52. Tender and payment into court.

§ 53. Custody and disposition of property pending suit.

§ 54. Bonds and stipulations in general.

### *Cross-References.*

Appeal bonds, see post, §§ 111, 120.

For costs, see post, § 123.

Judgment on bond or stipulation, see post, § 92.

§ 55. Bail.

§ 56. Security for dissolution of attachment.

§ 57. Security for release of vessel or other property.

### *Cross-Reference.*

Right of surety to subrogation, see "Subrogation," § 23.

§ 58. Security on cross-libel.

## IV. PLEADING, PETITIONS, AND MOTIONS.

### *Cross-References.*

In actions for maritime torts, see "Shipping," § 86.

Pleading in proceedings to enforce maritime liens, see "Maritime Liens," § 64.

Pleading in suit for collision, see "Collision," §§ 117, 118, 121.

Pleading in suit for salvage, see "Salvage," § 47.

No paragraphs under this sub-division. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 59. Allegations in general.

**§ 59(a). Filing.***Cross-Reference.*

See 1 Cent. Dig. Adm. 481.

**§ 60. Libel.****§ 61. Answer.****§ 62. Cross-libel.***Cross-Reference.*

Right to set-off, counterclaim, or cross-suit, see ante, § 36.

**§ 63. Reply.****§ 64. Interrogatories.***Cross-Reference.*

Answers to interrogatories, see post, § 75.

**§ 65. Exceptions, demurrers, and special pleas in bar.****§ 66. Amended and supplemental pleadings.***Cross-Reference.*

Effect of laches in applying for leave to amend on right to recover interest in excess of stipulation given, see post, § 122.

**§ 67. Signature and verification.****§ 68. Exhibits.****§ 69. Filing and service.****§ 70. Issues, proof, and variance.***Cross-Reference.*

Amendment to cure variance, see ante, § 66.

**§ 71. Defects and objections.****§ 72. Motions and proceedings thereon.****V. EVIDENCE, AND TAKING AND FILING PROOFS.***Cross-References.*

Evidence in proceedings to enforce maritime liens, see "Maritime Liens," § 65.

Evidence in suit for salvage, see "Salvage," § 48.

No paragraphs under this sub-division. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 73. Rules of evidence and mode of proof in general.***Cross-Reference.*

Declarations, see "Criminal Law," § 417.

**§ 74. Pleadings as evidence.****§ 75. Answers to interrogatories.****§ 76. Depositions.****§ 77. Testimony before commissioners.****VI. HEARING OR TRIAL, AND DECISION.***Cross-References.*

In actions for maritime torts, see "Shipping," § 86.

In suit for collision, see "Collision," § 149.  
In suit for salvage, see "Salvage," § 40.

No paragraphs under this sub-division. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 78. Preliminary proceedings.****§ 79. Course and conduct of hearing.****§ 80. Trial by jury.****§ 81. Decision.****§ 82. Rehearing or new trial.***Cross-Reference.*

Libel or bill for review, see post, § 94.

**VII. COMMISSIONERS AND PROCEEDINGS BEFORE THEM.***Cross-References.*

Taking testimony, see ante, § 77.

In suit for collision, see "Collision," § 150.

No paragraphs under this sub-division. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 83. Reference to commissioners.****§ 84. Proceedings before commissioners.****§ 85. Report.***Cross-Reference.*

Conclusiveness on appeal, see post, § 118.

**§ 86. Objections and exceptions to rulings and reports.****§ 87. Confirmation or recommitment of report.****VIII. DECREE AND ENFORCEMENT THEREOF.***Cross-References.*

In suit for collision, see "Collision," § 151.

In suit for salvage, see "Salvage," § 50.  
Recovery of payment under decree, see "Payment," § 89.

No paragraphs under this sub-division. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 88. Rendition, form, and requisites in general.****§ 89. Decrees by default or pro confesso.****§ 90.— Requisites and validity.****§ 91.— Opening or setting aside.****§ 92. Judgments on bonds or stipulations.****§ 93. Amendment, opening, or vacating.****§ 94. Libel or bill for review.****§ 95. Operation and effect of decree.****§ 96. Execution in general.****§ 97. Enforcement against property in court.****§ 98. Enforcement against sureties or stipulators.**



**§ 99. Sale or other disposition of property.**

*Cross-Reference.*

Enforcement of maritime liens, see "Maritime Liens," §§ 48, 68.

**§ 100. Rights and liabilities of purchasers.**

*Cross-Reference.*

Right of purchaser to subrogation, see "Subrogation," § 16.

**§ 101. Disposition of proceeds or remnants.**

*Cross-Reference.*

Enforcement of maritime liens, see "Maritime Liens," § 69.

**IX. APPEAL.**

*Cross-References.*

In suits for collision, see "Collision," § 153.

In suits for salvage, see "Salvage," § 51. Particular appellate courts, see "Courts," § 387.

No paragraphs under this sub-division. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 102. Appellate jurisdiction.**

*Cross-References.*

Of United States circuit court of appeals, see "Courts," § 405.

Of United States Supreme Court, see "Courts," § 382.

**§ 103. Decisions reviewable.**

**§ 104. Right of review.**

**§ 105. Presentation and reservation in lower court of grounds of review.**

**§ 106. Parties.**

**§ 107. Taking and perfecting appeal.**

**§ 108.— Time of taking proceedings.**

**§ 109.— Assignment of errors.**

**§ 110.— Petition or other proceedings for appeal.**

**§ 111.— Appeal bonds.**

*Cross-Reference.*

Liability on bonds, see post, § 120.

**§ 112.— Citation, notice, and appearance.**

*Cross-Reference.*

Absence of notice as ground for dismissal, see post, § 119.

**§ 113. Effect of appeal.**

**§ 114. Stay of execution.**

**§ 115. Record.**

**§ 116. Hearing and rehearing.**

**§ 117. Amendments, new pleadings, and proofs, and trial of cause anew.**

**§ 118. Review.**

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

**§ 119. Determination and disposition of cause.**

*Cross-Reference.*

Costs on appeal, see post, § 126.

**§ 120. Liabilities on appeal bonds.**

**X. COSTS.**

*Cross-References.*

In suits for collision, see "Collision," § 154.

In suits for salvage, see "Salvage," § 52.

No paragraphs under this sub-division. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 121. Power to award in general.**

**§ 122. Parties to and against whom awarded.**

**§ 123. Security for payment.**

**§ 124. Amount and items.**

**§ 125. Taxation.**

**§ 126. Costs on appeal.**

**§ 127. Payment and remedies for collection.**

**ADMISSION.**

*Cross-References.*

Right to admission to theater or other place of public amusement, see "Theaters and Shows," § 4.

To citizenship, see "Aliens," §§ 60-72.

To membership in association or corporation, see "Associations," § 8; "Beneficial Associations," § 8; "Building and Loan Associations," § 6; "Clubs," § 5; "Corporations," § 170; "Exchanges," § 5; "Joint-Stock Companies," § 10; "Religious Societies," § 7; "Trade Unions," § 4.

To membership in insurance societies, see "Insurance," §§ 55, 694.

To practice law, see "Attorney and Client," §§ 1-11.

To practice medicine and surgery, see "Physicians and Surgeons," §§ 3-5.

**ADMISSIONS.**

*Cross-References.*

See "Stipulations."

As evidence, see "Criminal Law," §§ 405-421; "Evidence," §§ 200-265.

As to common source of title, see "Ejectment," § 15.

As to contents of writings, see "Evidence," § 172.

As to making of statements as publication of slander, see "Libel and Slander," § 24.

As to matters not appearing of record, see "Appeal and Error," § 714.

Authority of officers and agents of banks to make, see "Banks and Banking," § 111.

Authority of officers and agents of corporations in general to make, see "Corporations," § 422.

By bill in equity, see "Equity," § 153.

By debtor as act of insolvency, see "Bankruptcy," § 61.  
 By demurrer to plea, see "Criminal Law," § 281.  
 By exceptions to findings of court, see "Trial," § 405.  
 By failure to traverse return to writ of habeas corpus, see "Habeas Corpus," § 83.  
 By master of vessel receivable against owner, see "Admiralty," § 73.  
 By motion to quash writ of habeas corpus, see "Habeas Corpus," § 72.  
 By plea of guilty, see "Criminal Law," § 273.  
 By setting down plea for hearing, see "Equity," § 175.  
 By tender, see "Tender," §§ 19, 26.  
 By witness of making of inconsistent statements as affecting right to introduce evidence of statements, see "Witnesses," § 389.  
 Ground of estoppel in pais, see "Estoppel," § 88.  
 In justice's court affecting review of proceedings, see "Justices of the Peace," § 184.  
 In pleading of guardian of insane person, see "Insane Person," § 97.  
 In pleadings, see "Equity," §§ 172, 186, 239; "Pleading," §§ 69, 127, 129, 177, 182, 183, 214, 376, 377.  
 In pleadings in actions by or against corporations in general, see "Corporations," § 513.

Judgment on admissions in pleadings, see "Judgment," §§ 84, 85, 87, 88, 90, 91.  
 Matters admitted by default, see "Judgment," § 112.  
 Of assets by executor or administrator, see "Executors and Administrators," § 290.  
 Of liability as affecting limitations, see "Limitation of Actions," §§ 141-151.  
 Of liability on insurance policy, see "Insurance," § 391.  
 Of plaintiff's cause of action by pleading set-off or counterclaim, see "Set-Off and Counterclaim," § 56.  
 Of service of process, see "Process," § 67.  
 On trial, as relieving adverse party from necessity of offering proof, see "Criminal Law," § 661; "Trial," § 36.  
 Payment as admission of indebtedness, see "Payment," § 48.  
 Power of partner to bind firm, see "Partnership," § 152.  
 Publication of libel as basis for plea of justification, see "Libel and Slander," § 94.  
 Refusal to answer information constituting admission of charges in contempt proceedings, see "Contempt," § 58.  
 To prevent change of venue, see "Venue," § 53.  
 To prevent continuance, see "Continuance," §§ 33-35; "Criminal Law," § 600.  
 To prevent taking of deposition, see "Depositions," § 15.

## ADOPTION.

### *Scope-Note.*

[INCLUDES taking child of another as one's own child; proceedings therefor, and rights, duties, and liabilities arising therefrom.

[EXCLUDES legitimization of illegitimate children (see "*Bastards*"). For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

- § 1. Nature of the proceeding.
- § 2. Constitutionality of statutes.
- § 3. Statutory provisions.
- § 4. Persons who may adopt others.
- § 5. Persons who may be adopted.
- § 6. Agreements to adopt.
- § 7. Consent of parties.
- § 8. Deed or declaration.
- § 9. Judicial proceedings.
- § 10. — Jurisdiction.
- § 11. — Petition.
- § 12. — Notice.
- § 13. — Examination and approval by court.
- § 14. — Order or decree.
- § 15. — Review.

- § 16. Setting aside or revoking adoption.
- § 17. Evidence of adoption.
- § 18. Status of adopted person in general.
- § 20. Rights, duties, and liabilities created in general.
- § 21. Inheritance by adopted children.
- § 22. Inheritance from adopted children.
- § 23. Inheritance through adopted children.
- § 24. Effect of adoption on property rights of surviving husband or wife.
- § 25. Foreign adoption.

### *Cross-References.*

- |  |   |
|--|---|
| <p>Application of statute of frauds to agreements to adopt, see "Frauds, Statute of," § 130.</p> <p>Contract to devise or bequeath property to adopted child, see "Wills," § 58.</p> <p>Effect of adoption on pending proceedings for appointment of guardian, see "Guardian and Ward," § 8.</p> <p>Legitimation of bastard, see "Bastards," § 13.</p> <p>Of by-laws of corporations in general, see "Corporations," § 56.</p> <p>Of common law, see "Common Law," §§ 11, 12.</p> <p>Of constitution, see "Constitutional Law," §§ 1-3.</p> <p>Of graded common school system, see "Schools and School Districts," § 12.</p> <p>Of local option law, see "Intoxicating Liquors," §§ 24-43.</p> | <p>Of mark or name, see "Trade-Marks and Trade-Names," § 23.</p> <p>Of school text-books, see "Schools and School Districts," § 167.</p> <p>Of statutes, see "Statutes," §§ 1-65.</p> <p>Omission to provide in will for adopted child, see "Descent and Distribution," § 47.</p> <p>Revocation of will by subsequent adoption of child, see "Wills," § 192.</p> <p>Right of foster parent to compel admission of child to public school, see "Schools and School Districts," § 155.</p> <p>Specific performance of contract to adopt, see "Specific Performance," §§ 16, 25, 38, 43, 49, 55, 86, 102, 120.</p> <p>Testimony in action to enforce contract of adoption as to transactions with persons since deceased, see "Witnesses," § 140.</p> <p>What law governs damages for breach of contract of adoption, see damages," § 2.</p> |
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### NOTE.

Few Maryland cases touching this subject are to be found in the Maryland Reports. Nevertheless, the titles and sub-titles are given as they appear in the American Digest Key Number classification, so that the investigator may at one time accomplish the double purpose of learning whether a given point has been passed upon by the Maryland Courts and also ascertain the particular place in the American Digest System where all state and federal cases upon the point will be found collected.

References to valuable notes in the L. R. A. and copious cross-references will also be found throughout the title.

### § 1. Nature of the proceeding.

(a) The adoption of children, although a practice of great antiquity, recognized by the civil law throughout its entire history, and observed in countries whose jurisprudence is founded on that law, was unknown to the common law, and exists in states which have inherited that system of jurisprudence only by virtue of statute.—*Hillers v. Taylor*, 108 Md. 148, 69 Atl. 715.

### § 2. Constitutionality of statutes.

#### *Cross-Reference.*

General or special nature of law, see "Statutes," § 78.

### § 3. Statutory provisions.

#### *Cross-References.*

Construction of statutes in derogation of common law, see "Statutes," § 239.

Construction of statutes in general, see "Statutes," § 199.

Pleading foreign statute, see "Statutes," § 281.

Subject and title of act relating to societies to secure adoption of children, see "Statutes," § 113.

See also § 13, post.

#### *Annotation.*

For Maryland statutory provisions see Code, art. 16, §§ 72-77.

(a) The adoption statute of Maryland is inapplicable in the determination of the capacity of an adopted child to take a fund from one who died before the passage of the statute.—*Fisher v. Wagner*, 109 Md. 243, 71 Atl. 999.

### § 4. Persons who may adopt others.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

## § 5. Persons who may be adopted.

### Cross-Reference.

Retractive operation of statute, see ante, § 3.

(a) *Held*, that under the circumstances of this case an attempted adoption of an adult was abortive.—*Hillers v. Taylor*, 108 Md. 148, 69 Atl. 715.

(b) *Quære*, whether the adoption statute of this State contemplates the adoption of an adult.—*Hillers v. Taylor*, 108 Md. 148, 69 Atl. 715.

## § 6. Agreements to adopt.

## § 7. Consent of parties.

### Annotation.

Validity of adoption without consent of natural parents.—30 L. R. A. (N. S.) 146, note.

## § 8. Deed or declaration.

### Cross-References.

Acknowledgment of married woman, see "Acknowledgment," § 37.

Authority to take acknowledgment, see "Acknowledgment," § 16.

## § 9. Judicial proceedings.

### Annotation.

For Maryland statutory provisions, see Code, art. 16, §§ 72-77.

## § 10.— Jurisdiction.

## § 11.— Petition.

## § 12.— Notice.

## § 13.— Examination and approval by court.

(a) The adoption of children is unknown to the common law, and is governed in Md. by Code, art. 16, §§ 72, *et seq.*, providing for the adoption of minor children.—*Hillers v. Taylor*, 108 Md. 148, 69 Atl. 715.

## § 14.— Order or decree.

### Cross-Reference.

Jurisdiction of courts to revoke order of other court, see "Courts," § 481.

## § 15.— Review.

## § 16. Setting aside or revoking adoption.

## § 17. Evidence of adoption.

## § 18. Status of adopted person in general.

### Cross-Reference.

Under agreement, see ante, § 6.

### Annotation.

For Maryland statutory provisions, see Code, art. 16, §§ 74, *et seq.*  
Legal status of adopted child.—17 L. R. A. 435, note.

## § 19. (Omitted from the classification used herein.)

## § 20. Rights, duties, and liabilities created in general.

### Cross-References.

Construction of deed, see "Deeds," § 105.

Construction of will, see "Wills," § 407.

See § 18, ante.

## § 21. Inheritance by adopted children.

### Cross-References.

Construction of contract, see ante, § 6.

Foreign adoption, see post, § 25.

Retroactive operation of statute, see ante, § 3.

Effect as to will, see "Wills," § 192.

### Annotation.

For Maryland statutory provisions, see art. 16, §§ 74 *et seq.*

(a) Under a will devising property to the son of the testatrix for life, and after his death to his children, *held*, that an adopted child of the son is not entitled to take under the will.—*Eureka Life Ins. Co. v. Geis*, 121 Md. 196, 88 Atl. 158.

(b) The adoption statute of Maryland is inapplicable in the determination of the capacity of an adopted child to take a fund from one who died before the passage of the statute.—*Fisher v. Wagner*, 109 Md. 243, 71 Atl. 999.

## § 22. Inheritance from adopted children.

### Cross-Reference.

See § 21, ante.

## § 23. Inheritance through adopted children.

### Cross-Reference.

See § 21, ante.

## § 24. Effect of adoption on property rights of surviving husband or wife.

## § 25. Foreign adoption.

### Annotation.

For Maryland statutory provision, see Code, art. 16, § 77.

Conflict of laws as to adoption.—17 L. R. A. 439; 65 L. R. A. 186, notes.

# ADULTERATION.

## Scope-Note.

[INCLUDES corruption or dilution of articles of commerce by admixture of foreign substances, and factitious imitation or simulation of such articles in general; nature and extent of criminal responsibility therefor, and grounds of defense; and prosecution and punishment of such acts as public offenses.

[EXCLUDES regulation, for protection of public health, of manufacture, sale, and use of articles of food and drink (see "*Food*"), and medicines (see "*Druggists*"); civil liabilities on sales of adulterated goods (see "*Sales*"); and inspection for prevention of fraud (see "*Inspection*"). For complete list of matters excluded, see cross-references, post.]

## Analysis.

- § 1. Power to make regulations.
- § 2. Constitutionality of regulations.
- § 3. Statutory provisions.
- § 4. Nature and elements of offenses.
- § 5. Defenses.
- § 6. Persons liable.
- § 7. Penalties and actions therefor.
- § 8. Jurisdiction of criminal prosecutions.
- § 9. Indictment or information.
- § 10. — Requisites and sufficiency.
- § 11. — Issues, proof, and variance.
- § 12. Evidence.
- § 13. Trial and review.

## Cross-References.

Conflicting regulations by state and city, see " <i>Municipal Corporations</i> ," § 592.	articles of food or drink in general, see " <i>Food</i> ."
Inspection for prevention of fraud, see " <i>Inspection</i> ."	Right to jury trial in prosecution therefor, see " <i>Jury</i> ," § 29.
Laws declaring it unlawful to sell adulterated milk as impairing obligation of contract, see " <i>Constitutional Law</i> ," § 155.	Sale of adulterated drugs, see " <i>Druggists</i> ," § 12.
Of drugs with poisons, see " <i>Poisons</i> ."	Statute declaring what constitutes adulteration as invading province of judiciary, see " <i>Constitutional Law</i> ," § 52.
Regulation of manufacture, sale, and use of	

## NOTE.

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### § 1. Power to make regulations.

#### Cross-Reference.

See § 2, post.

#### Annotation.

Prohibition of adulteration of milk.—1 L. R. A. (N. S.) 928, note.

Right to require that articles offered for

sale shall answer a designated standard of purity.—41 L. R. A. (N. S.) 149, note.

### § 2. Constitutionality of regulations.

### § 3. Statutory provisions.

#### Cross-Reference.

See § 2, ante.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

**§ 4. Nature and elements of offenses.***Annotation.*

Use of coloring matter in food stuffs, oils, etc., as adulteration.—25 L. R. A. (N. S.) 1234, note.

**§ 5. Defenses.****§ 6. Persons liable.***Annotation.*

Criminal liability for adulteration of food by servant, agent, or partner.—41 L. R. A. 656, note.

**§ 7. Penalties and actions therefor.****§ 8. Jurisdiction of criminal prosecutions.****§ 9. Indictment or information.****§ 10.—Requisites and sufficiency.***Cross-Reference.*

Following language of statute, see "Indictment and Information," §§ 110, 111.

**§ 11.—Issues, proof, and variance.****§ 12. Evidence.***Cross-References.*

Opinion evidence, see "Criminal Law," §§ 481, 483.

Other offenses, see "Criminal Law," § 369.

**§ 13. Trial and review.***Cross-Reference.*

Right to jury trial, see "Jury," § 29.

**ADULTERY.***Scope-Note.*

[INCLUDES sexual intercourse by a married woman with a man other than her husband, or by a married man with a woman other than his wife, and solicitation to commit such acts, regarded as an offense against public morals, not merely as a breach of the obligation of marriage; nature and extent of criminal responsibility therefor, and grounds of defense; and prosecution and punishment of such acts as public offenses.

[EXCLUDES actions for criminal conversation or for alienating affections of husband or wife (see "*Husband and Wife*"); adultery as ground of divorce (see "*Divorce*"); adultery as provocation for homicide (see "*Homicide*"); and offense of adulterous cohabitation (see "*Lewdness*"). For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Nature and elements of offenses.
- § 2. Defenses.
- § 3. Persons liable.
- § 4. Persons entitled to prosecute.
- § 5. Preliminary proceedings in prosecution.
- § 6. Indictment or information.
- § 7. — Requisites and sufficiency.
- § 8. — Issues, proof, and variance.
- § 9. Evidence.
- § 10. — Presumptions and burden of proof.
- § 11. — Admissibility in general.
- § 12. — Marriage.
- § 13. — Criminal intercourse.
- § 14. — Weight and sufficiency.
- § 15. Trial and review.
- § 16. Sentence and punishment.

*Cross-References.*

See "Bigamy"; "Fornication"; "Lewdness." As bar to widow's allowance, see "Executors and Administrators," § 188.

Commission of crime on Indian reservation, see "Indians," § 38.

Competency of husband or wife as witness, see "Witnesses," § 61.  
 Concealment of offense of, as motive for homicide, see "Homicide," § 166.  
 Conspiracy to commit adultery, see "Conspiracy," § 28.  
 Conviction of offense included in charge, see "Indictment and Information."  
 Criminal conversation, see "Husband and Wife," §§ 340-354.  
 Effect of adultery by wife on duty of husband to support, see "Husband and Wife," § 4.  
 Evidence as to adultery by ancestor in action between children and surviving wife, see "Descent and Distribution," § 83.  
 Former jeopardy, see "Criminal Law," § 203.  
 Grounds for continuance in prosecution therefor, see "Criminal Law," §§ 595, 596.  
 Ground for divorce, see "Divorce," § 26.  
 Ground for forfeiture of right to dower, see "Dower," § 51.  
 Ground for new trial in prosecution therefor, see "Criminal Law," §§ 938, 945.  
 Killing of husband in self-defense by wife's

paramour, see "Homicide," § 112.  
 Laws defining adultery as applicable to District of Columbia, see "District of Columbia," § 4.  
 Libel or slander in charging another with commission of offense, see "Libel and Slander," § 7.  
 Of husband as abandonment of wife, see "Husband and Wife," § 304.  
 Of husband or wife as provocation for homicide, see "Homicide," § 47.  
 Of wife as defense to prosecution for abandonment, see "Husband and Wife," § 305.  
 Pendency of indictment ground for removal of superintendent of schools, see "Schools and School Districts," § 63.  
 Restrictions on power to devise or bequeath between persons living in adultery, see "Wills," § 17.  
 Separate trial of co-defendants, see "Criminal Law," § 622.  
 Threats to accuse of, see "Threats," § 6.  
 Transfer of prosecution to other court, see "Criminal Law," § 101.  
 Trial of persons separately indicted, see "Criminal Law," § 620.

## NOTE.

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References to valuable notes in the L. R. A. and copious cross-references will also be found throughout the title.

## § 1. Nature and elements of offenses.

*Cross-Reference.*

Offense against United States and territory, see "Criminal Law," § 16.

*Annotation.*

What necessary to constitute open, notorious adultery.—2 L. R. A. (N. S.) 1186, note.

Effect of fact that but one of the parties is married upon the offense of "adultery."—18 L. R. A. (N. S.) 580, note.

Solicitation to adultery.—25 L. R. A. 438, note.

## § 2. Defenses.

*Annotation.*

Ignorance of defendant, in prosecution for adultery, that other party was married, as a defense.—18 L. R. A. (N. S.) 527, note.

## § 3. Persons liable.

*Annotation.*

Insanity as affecting adultery.—34 L. R. A. 162, note.

## § 4. Persons entitled to prosecute.

*Cross-Reference.*

See ante, § 3.

*Annotation.*

Construction and effect of provisions requiring prosecution to be upon com-

plaint of husband or wife.—19 L. R. A. (N.S.) 786, note.

## § 5. Preliminary proceedings in prosecution.

## § 6. Indictment or information.

*Cross-References.*

Conviction of offense included in charge, see "Indictment and Information," § 191.

Election between counts, see "Indictment and Information," § 132.

Joinder of parties, see "Indictment and Information," § 124.

Prosecutor, see "Indictment and Information," § 8.

## § 7.—Requisites and sufficiency.

## § 8.—Issues, proof, and variance.

*Cross-Reference.*

Time of offense, see "Indictment and Information," § 176.

## § 9. Evidence.

*Cross-Reference.*

Competency of husband or wife as witness, see "Witnesses," § 61.

Evidence in civil actions, see "Descent and Distribution," § 83; "Divorce," §§ 115, 129.

Privilege of witness, see "Witnesses," § 297.

### § 10.—Presumptions and burden of proof.

#### *Cross-Reference.*

From failure to call witness, see "Criminal Law," § 317.

### § 11.—Admissibility in general.

#### *Cross-References.*

Acts and declarations of conspirators and co-defendants, see "Criminal Law," § 422.

Admissions in general, see "Criminal Law," §§ 406, 407.

Best and secondary evidence, see "Criminal Law," § 400.

Confessions, see "Criminal Law," § 517.

Declarations in general, see "Criminal Law," §§ 412, 417, 418.

Demonstrative evidence, see "Criminal Law," § 404.

Documentary evidence in general, see "Criminal Law," §§ 438, 442.

Hearsay, see "Criminal Law," §§ 420, 421.

Opinion evidence, see "Criminal Law," §§ 448, 491.

Other offenses, see "Criminal Law," §§ 369, 372, 373.

#### *Annotation.*

Evidence of other crimes in prosecution for adultery.—62 L. R. A. 329, note.

Competency of one spouse to testify as to misconduct of other spouse on indictment of paramour for adultery.—39 L. R. A. (N. S.) 318, note.

### § 12.—Marriage.

#### *Cross-Reference.*

Best and secondary evidence, see "Criminal Law," §§ 398, 404.

#### *Annotation.*

Necessity of proof of marriage in prosecution for adultery.—68 L. R. A. 44, 72, note.

### § 13.—Criminal intercourse.

#### *Cross-Reference.*

Presumptions and burden of proof, see ante, § 10.

### § 14.—Weight and sufficiency.

#### *Cross-References.*

Evidence of marriage, see ante, § 12.

Question for jury, see post, § 15.

Confessions, see "Criminal Law," § 535.

Testimony of accomplices and co-defendants, see "Criminal Law," § 511.

### § 15. Trial and Review.

#### *Cross-References.*

Application and affidavit for continuance see "Criminal Law," § 603.

Argument of counsel, see "Criminal Law," §§ 720, 721.

Election between acts, see "Criminal Law," § 678.

Grounds for arrest of judgment, see "Criminal Law," § 970.

Grounds for new trial, see "Criminal Law," §§ 918, 938, 945.

Reversal on appeal, see "Criminal Law," § 1186.

### § 16. Sentence and punishment.

## ADVANCEMENTS.

#### *Cross-References.*

See "Descent and Distribution," §§ 93-118; "Wills," §§ 758-762.

By parent to child, see "Parent and Child," § 10.

Declarations by decedents in relation thereto, see "Evidence," § 278.

Parol evidence to rebut presumption where parent purchases property in child's name, see "Evidence," § 462.

Parol proof that note evidences advancement, see "Evidence," § 462.

Payment, as advancement, of consideration for conveyance to another as creating resulting trust, see "Trusts," § 82.

Unauthorized advancements by trustee to cestui que trust, see "Trusts," § 285.

#### *Annotation.*

1 Words and Phrases, 218-222.

## ADVANCES.

#### *Cross-References.*

See "Money Lent."

As consideration for contract, see "Contracts," § 64.

As creating equitable lien, see "Liens," § 7.

Between husband and wife, see "Husband and Wife," §§ 43, 143.

By agent, see "Principal and Agent," § 85.

By broker, see "Brokers," §§ 25, 72.

By cestui que trust for benefit of trust estate, see "Trusts," § 338.

By contractors for public improvements, see "Municipal Corporations," § 343.

By executor or administrator to distributees, see "Executors and Administrators," § 301.

By executor or administrator to pay claims, see "Executors and Administrators," § 266.

By factor, see "Factors," §§ 23, 45.

By landlord to tenant, see "Landlord and Tenant," §§ 181-274.

By partner to firm, see "Partnership," §§ 74, 75.

By trustee, see "Trusts," § 277.

By warehouseman, see "Warehousemen," § 30.

Contracts by infants, see "Infants," § 51.

Contracts by insane persons, see "Insane Persons," § 76.

Contracts by married women, see "Husband and Wife," § 84.

Contracts in general, see "Contracts," § 194.

Enforcement of liability for advances against homestead, see "Homestead," § 99.

For benefit of property held in common, see "Tenancy in Common," § 52.

For freight charges and expenses, see "Carriers," § 190.



Fraudulent breach of contract of employment by employe who has received advances, see "Master and Servant," § 67.  
Interest on, see "Interest," § 10.

Liens for advances of money for improvements on land, see "Mechanics' Liens," § 51.

Maritime liens for advances, see "Maritime Liens," §§ 14, 20, 25½.

Mortgage to secure future advances, see "Chattel Mortgages," §§ 22, 110; "Mortgages," §§ 16, 116.

Of wages to seamen, see "Seamen," § 23.

Recovery of unexpended balance, see "Money Received," § 10.

Reimbursement of advances in joint adventure, see "Joint Adventures," § 4.

Reimbursement on partition, see "Partition," § 87.

Subrogation of persons making advances for discharge of debt or incumbrance, see "Subrogation," § 23.

Subrogation of persons making advances for necessities or improvements, see "Subrogation," § 24.

Time when interest on advances begins to run, see "Interest," § 39.

To contractors, see "Mechanics' Liens," § 115.

To corporation by officers, see "Corporations," § 309.

To firm by partners, repayment on dissolution, see "Partnership," § 304.

To pay claims against estate of decedent, see "Executors and Administrators," § 266.

To railroad companies, see "Railroads," § 171.

To receivers, see "Receivers," § 97.

To vessels, see "Shipping," § 76.

To vessels, liabilities of insurer under policy, see "Insurance," § 491.

#### Annotation.

1 Words and Phrases, 214-218.

### ADVERSE CLAIM.

#### Cross-References.

Determination of adverse claims to real property, see "Quieting Title," §§ 18-25.  
Right to jury trial, see "Jury," § 14.

To bankrupt's property, see "Bankruptcy," § 288.

To goods sold, as defect in title of seller, see "Sales," § 136.

To mining location, see "Mines and Minerals," § 41.

To property in hands of receiver, see "Receivers," § 77.

To property levied on, see "Attachment," §§ 280-317; "Execution," §§ 178-212; "Garnishment," §§ 200-226.

To public lands, determination in land office, see "Public Lands," § 103.

To real property, acquisition or assertion by purchaser, see "Vendor and Purchaser," § 190.

To real property as ground of suit to quiet title, see "Quieting Title," § 6.

#### Annotation.

1 Words and Phrases, 223.

### ADVERSE INTEREST.

#### Cross-References.

See "Parties," §§ 21-35.

Parties on appeal, see "Appeal and Error," §§ 321-336.

#### Annotation.

1 Words and Phrases, 223.

### ADVERSE PARTIES.

#### Cross-References.

As witnesses, see "Witnesses," §§ 80-183.  
Entitled to notice of appeal, see "Appeal and Error," § 414.

Examination before trial, see "Discovery."

#### Annotation.

1 Words and Phrases, 224-227.

## ADVERSE POSSESSION.

#### Scope-Note.

[INCLUDES possession of property so inconsistent with the possession or title of another as to constitute an element of title or evidence of title in the possessor; nature, requisites, incidents, operation, and effect of such possession; evidence relating thereto, and acquisition of title thereby.

[EXCLUDES validity of conveyances of land held adversely, and of agreements to share property to be recovered by suit (see "*ChamPERTY and Maintenance*"); effect of adverse possession on rights of particular classes of persons (see "*Infants*"; "*Insane Persons*"; and other specific heads), or as between co-tenants (see "*Joint Tenancy*"; "*Tenancy in Common*"), or on particular estates or interests (see "*Life Estates*"; "*Remainders*"; "*Landlord and Tenant*"; "*Easements*"; "*Mines and Minerals*"; "*Waters and Water Courses*"; and other specific heads; and to sustain or defeat particular remedies (see "*Ejectment*"; "*Trespass*"; and other specific heads); and limitations of remedies in general (see "*Limitation of Actions*"). For complete list of matters excluded, see cross-references, post.]

*Analysis.***I. Nature and Requisites.****(A) ACQUISITION OF RIGHTS BY PRESCRIPTION IN GENERAL.**

- § 1. Nature and grounds of prescription.
- § 2. What law governs.
- § 3. Constitutional and statutory provisions in general.
- § 4. Against whom prescription may be claimed.
- § 5. Property subject to prescription.
- § 6. — Rights and interests of private individuals.
- § 7. — Public property in general.
- § 8. — Property dedicated to or acquired for public use.
- § 9. — Property held by municipalities for other than public use.
- § 10. Persons entitled to claim by prescription.
- § 11. Intent to acquire title or right.
- § 12. Necessity of claim or color of title.
- § 13. Character and elements of adverse possession in general.

**(B) ACTUAL POSSESSION.**

- § 14. Necessity.
- § 15. Entry on land.
- § 16. Acts of ownership in general.
- § 17. Use and occupation.
- § 18. Residence.
- § 19. Inclosure.
- § 20. Improvements.
- § 21. Cultivation.
- § 22. Pasturage.
- § 23. Cutting timber.
- § 24. Occasional or temporary use or occupation.
- § 25. Possession of agent, tenant, or vendee.
- § 26. Lawful possession.
- § 27. Evidence.

**(C) VISIBLE AND NOTORIOUS POSSESSION.**

- § 28. Necessity.
- § 29. Open and visible character of possession.
- § 30. Notoriety of possession.
- § 31. Knowledge of or notice to former owner.
- § 32. Filing or recording notice.
- § 33. Evidence.

**(D) DISTINCT AND EXCLUSIVE POSSESSION.**

- § 34. Necessity.
- § 35. Possession distinct from that of others.
- § 36. Possession exclusive of others.
- § 37. Possession exclusive of former owner.
- § 38. Evidence.

**(E) DURATION AND CONTINUITY OF POSSESSION.**

- § 39. Time requisite for acquisition of rights.
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- § 75. — Partition.
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- § 77. — Administrators' and guardians' sales and deeds.
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Acquisition of water rights by prescription, see "Waters and Water Courses," §§ 127-152.

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 By co-tenant, see "Joint Tenancy," § 9; "Tenancy in Common," § 15.  
 By officer as against corporation, see "Corporations," § 313.  
 By or against insane person, see "Insane Persons," § 59.  
 By or against married woman, see "Husband and Wife," § 69½.  
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Dedication as against adverse occupant, see "Dedication," § 48.  
 Delay in prosecution of action as affecting purchasers pendente lite, see "Lis Pendens," § 10.  
 Deprivation of property without due process of law, see "Constitutional Law," § 308.  
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 Following state statutes of limitations in federal courts, see "Courts," § 375.  
 Fraud as ground for equitable relief against judgment on plea of limitations, see "Judgment," § 443.  
 Grants of lands held adversely, see "Champerly and Maintenance," § 7.  
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 Operation and effect of sale of school lands, see "Public Lands," § 54.  
 Owners' ignorance of title as affecting limitations, see "Limitation of Actions," § 95.  
 Rights acquired by adjoining landowner in respect to partition fences, see "Fences," § 8.  
 Rights of purchaser pendente lite, see "Lis Pendens," § 26.  
 Sale, by administrator, of land held adversely, see "Executors and Administrators," § 329.  
 Statute providing for creation of title by adverse possession as deprivation of property without due process of law, see "Constitutional Law," § 308.  
 Validity of retrospective laws precluding the vesting of title by adverse possession in one holding under unrecorded deed, see "Constitutional Law," § 190.

## I. NATURE AND REQUISITES.

### (A) ACQUISITION OF RIGHTS BY PRESCRIPTION IN GENERAL.

#### *Cross-Reference.*

Dependent on necessary width of right of way through public lands, see "Public Lands," § 92.

### § 1. Nature and grounds of prescription.

(a) The statute of 21 Jac. I. [Alex. Brit. Stat. (Coe's Ed.) p. 599], prescribing limitations to entries on real estate, is applicable in Maryland to cases of leases for 99 years, renewable forever.—*Kopp v. Herrman*, 82 Md. 339, 33 Atl. 646. [Cited and annotated in 15 L. R. A. (N. S.) 1215, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

(b) Even though a patent to land was

regularly issued to plaintiff's grantor, if one through whom defendant claimed the land held by adverse possession and actual inclosure for more than 20 years prior to his death and the issue of the patent, and claimed title during the whole time of such possession, and the patentee before receiving the patent, and more than ten years before the suit was brought, was within the limits of the county and knew of such possession, plaintiff could not recover.—*Morgan's Lessee v. Slider*, 22 Md. 267.

(c) Possession, to be effectual, either to prevent a recovery or vest a right under the statute of limitations, must be actual, continued, adverse, and exclusive.—*Stump v. Henry*, 6 Md. 201, 41 Am. Dec. 300. [Cited and annotated in 15 L. R. A. (N. S.) 1190, on necessity for color of title,

not expressly made a condition by statute, in adverse possession.]

(d) The lord proprietary of Maryland was not barred by the act of limitations of that state.—*Baltimore v. Evans*, 4 H. & McH. 482; *Steuart v. Mason*, 3 H. & J. 507.

(e) No person could obtain possession by entering upon the vacant lands of the lord proprietary of Maryland, so as to bar his right, no matter how long such possession continued, it being an intrusion, and not a legal possession.—*Lux v. Pellet*, 1 H. & J. 83, note; *Cheney v. Ringgold*, 2 H. & J. 87.

(f) Where the lord proprietary of Maryland and one A. were tenants in common of a tract of land, in 1686, at the time when the lord proprietary was in Maryland where he remained two years thereafter, and A. entered upon and claimed the whole tract adverse to the proprietary, and, together with those claiming under him, had the uninterrupted possession of the land, claiming the whole, from 1687 to 1781, it was held that the proprietary was barred by the adverse possession of A. and those claiming under him.—*Russell v. Baker*, 1 H. & J. 71.

(g) Adverse possession may be set up against the lord proprietary.—*Kelly v. Greenfield*, 2 H. & McH. 121. [*Cited and annotated* in 26 L. R. A. 451, on abandonment of highway by non-user, or otherwise than by act of authorities.]

## § 2. What law governs.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 3. Constitutional and statutory provisions in general.

### Cross-References.

Construction of limitation laws in general, see "Limitation of Actions," § 5.

Impairment of vested rights, see "Constitutional Law," § 107.

Retroactive operation of statutes of limitations, see "Limitation of Actions," § 6.

(a) The statute of 21 Jac. I., [Alex. Brit. Stat. (Coe's Ed.) p. 599], prescribing limitations to entries on real estate, is applicable in Maryland to cases of leases for 99 years, renewable forever.—*Kopp v. Herrman*, 82 Md. 339, 33 Atl. 646. [*Cited and annotated* in 15 L. R. A. (N. S.) 1215, on necessity for

color of title, not expressly made a condition by statute, in adverse possession.]

## § 4. Against whom prescription may be claimed.

### Cross-References.

Co-tenant, see "Joint Tenancy," § 9; "Tenancy in Common," § 15.

Creditors by fraudulent grantee, see "Fraudulent Conveyances," § 181.

Effect on beneficiary of limitations against trustee, see "Limitation of Actions," § 174.

Infants, see "Infants," § 24.

Insane persons, see "Insane Persons," § 59.

Landlord, by tenant, see "Landlord and Tenant," § 66.

Married women, see "Husband and Wife," §§ 16, 69½.

Repeal of statute making limitations applicable to state, see "Limitation of Actions," § 11.

Reversioners or remaindermen, see "Life Estates," § 8; "Remainders," § 17.

(a) Where one against whom a decree for the sale of property was passed by consent had lost her right to entry in the property by limitations and adverse possession, the fact that she was not aware of her rights as tenant in tail was a mistake in law, which would be of no avail as against a plea of limitations, and furnished no ground for setting aside the decree passed against her by consent.—*Wickes v. Wickes*, 98 Md. 307; 56 Atl. 1017; *Stevens v. Wickes*, *Ibid*; *Wickes v. Stevens*, *Ibid*.

(b) Even though a patent to land was regularly issued to plaintiff's grantor if one through whom defendant claimed the land held by adverse possession and actual inclosure for more than 20 years prior to his death and the issue of the patent, and claimed title during the whole time of such possession, and the patentee before receiving the patent, and more than ten years before the suit was brought, was within the limits of the county and knew of such possession, plaintiff could not recover.—*Morgan's Lessee v. Slider*, 22 Md. 267.

(c) The lord proprietary of Maryland was not barred by the act of limitations of that state.—*Baltimore v. Evans*, 4 H. & McH. 482; *Steuart v. Mason*, 3 H. & J. 507.

(d) No person could obtain possession by entering upon the vacant lands of the lord proprietary of Maryland, so as to bar his right, no matter how long such possession

continued, it being an intrusion, and not a legal possession.—*Lux v. Pellet*, 1 H. & J. 83, note; *Cheney v. Ringgold*, 2 H. & J. 87.

(e) Where the lord proprietary of Maryland and one A. were tenants in common of a tract of land, in 1686, at the time when the lord proprietary was in Maryland where he remained two years thereafter, and A. entered upon and claimed the whole tract adverse to the proprietary, and, together with those claiming under him, had the uninterrupted possession of the land, claiming the whole, from 1687 to 1781, it was held that the proprietary was barred by the adverse possession of A. and those claiming under him.—*Russell v. Baker*, 1 H. & J. 71.

(f) Adverse possession may be set up against the lord proprietary.—*Kelly v. Greenfield*, 2 H. & McH. 121. [*Cited and annotated* in 26 L. R. A. 451, on abandonment of highway by non-user, or otherwise than by act of authorities.]

(g) Thirty years' possession was held no bar to the lord proprietary of Maryland.—*Tasker v. Whittington*, 1 H. & McH. 151.

## § 5. Property subject to prescription.

### Cross-References.

See "Replevin."

Time requisite for acquiring title to personal property, see post, § 40.

Acquisition of easements, see "Easements," §§ 2, 32.

## § 6.— Rights and interests of private individuals.

### Cross-Reference.

See § 50, post.

(a) The statute of 21 Jac. I. [Alex. Brit. Stat. (Coe's Ed.) p. 599], prescribing limitations to entries upon real estate, is applicable in Maryland to leases for ninety-nine years, renewable forever.—*Kopp v. Herrman*, 82 Md. 339, 33 Atl. 646. [*Cited and annotated* in 15 L. R. A. (N. S.) 1215, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

## § 7.— Public property in general.

### Cross-References.

Property of the lord proprietary, see ante, §§ 1, 4.

Evidence, see post, § 114.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 8.— Property dedicated to or acquired for public use.

### Cross-References.

Title and right acquired, see post, § 106.

Color of title, see post, § 12.

Hostile character of possession, see post, § 60.

Public lands, see ante, § 7.

Constitutionality of statute denying right to acquire railroad right of way by adverse possession, special privilege, see "Constitutional Law," § 205.

### Annotation.

Rights acquired as against the public by adverse possession of highway or city street.—18 L. R. A. 146, note.

(a) Under act Jan. 1, 1825 (Acts 1824, c. 79), incorporating a canal company, with power to condemn land and acquire an absolute estate in perpetuity, and Acts 1844, c. 287, § 10, providing in effect that adverse possession, however long continued, may not deprive the company of title to its lands, the company acquires a fee simple title to lands condemned; and its title cannot be lost, by adverse possession, by mere length of possession, with or without its permission.—*Bond v. Murray*, 118 Md. 445, 84 Atl. 655.

(b) An unauthorized possession of a square in a town dedicated to the public cannot ripen into a title by prescription.—*Cushwa v. Burgess & Commissioners of Williamsport*, 117 Md. 306, 83 Atl. 389.

(c) Defendant's predecessors took possession of a lot formerly belonging to a city, and maintained a stable thereon for more than 20 years. The lines of the lot were marked out by the city's officials as appurtenant to the stable, and then assessed to such occupants according to the square feet in the lot so marked out, after which the occupants paid the taxes thereon for six successive years. *Held*, that they thereby acquired a valid title to such lot by adverse possession.—*Baltimore City v. Rowe*, 107 Md. 704 (memo. decision), 67 Atl. 93 (full report of case); *Rowe v. Baltimore City*, *Ibid*.

(d) A property owner abutting upon a turnpike cannot acquire, by adverse possession, an easement in the public highway for the construction of sidewalks in front of his property.—*Ulman v. Charles St. Ave. Co.*, 83 Md. 130, 34 Atl. 366.

### § 9.—Property held by municipalities for other than public use.

(a) Defendant's predecessors took possession of a lot formerly belonging to a city, and maintained a stable thereon for more than 20 years. The lines of the lot were marked out by the city's officials as appurtenant to the stable, and then assessed to such occupants according to the square feet in the lot so marked out, after which the occupants paid the taxes thereon for six successive years. *Held*, that they thereby acquired a valid title to such lot by adverse possession.—*Baltimore City v. Rowe*, 107 Md. 704 (memo. decision), 67 Atl. 93 (full report of case); *Rowe v. Baltimore City*, *Ibid*.

### § 10. Persons entitled to claim by prescription.

#### *Cross-References.*

Co-tenant, see "Joint Tenancy," § 9;  
"Tenancy in Common," § 15.

Establishment of highways by prescription, see "Municipal Corporations," § 648.

Grantee in tax deed, see "Taxation," § 736.

Husband or wife, see "Husband and Wife," § 16.

Lessee, see "Landlord and Tenant," § 66.

Life tenants, see "Life Estates," § 8.

Married woman, see "Husband and Wife," § 69½.

Minors, see "Infants," § 24.

Officer as against corporation, see "Corporations," § 313.

Trustee, see "Trusts," § 138.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 11. Intent to acquire title or right.

#### *Cross-References.*

Evidence, see post, § 114.

Extent of possession, see post, § 100.

#### *Annotation.*

Necessity of intent.—15 L. R. A. (N. S.) 1205, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 12. Necessity of claim or color of title.

#### *Cross-References.*

Hostile character of possession, see post, § 68.

Payment of taxes, see post, § 91.

Validity and sufficiency of title or claim, see post, §§ 70-82.

#### *Annotation.*

The necessity of color of title when not expressly made a condition by statute

to found title by adverse possession.—15 L. R. A. (N. S.) 1178, note.

(a) Possession, to be effectual, either to prevent a recovery or vest a right under the statute of limitations, must be an actual, continued, adverse, and exclusive possession.—*Stump v. Henry*, 6 Md. 201, 41 Am. Dec. 300. [*Cited and annotated* in 15 L. R. A. (N. S.) 1190, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

### § 13. Character and elements of adverse possession in general.

(a) Possession, to be effectual, either to prevent a recovery or vest a right under the statute of limitations, must be an actual, continued, adverse, and exclusive possession.—*Stump v. Henry*, 6 Md. 201, 41 Am. Dec. 300. [*Cited and annotated* in 15 L. R. A. (N. S.) 1190, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

#### (B) ACTUAL POSSESSION.

#### *Cross-References.*

Extent of actual possession, see post, § 96.

Instructions, see post, § 116.

Question for jury, see post, § 115.

### § 14. Necessity.

(a) Title to lands from the state draws the seisin or actual legal possession to it; so that one who has derived his title from the state is, by force of his title, in possession until an ouster or disseisin is committed by some one entering upon the land with a claim of the possession adversely to him.—*Hoye v. Swan*, 5 Md. 237. [*Cited and annotated* in 15 L. R. A. 1243, 1245, 1246, 1250, on necessity for color of title, not expressly made a condition by statute, in adverse possession; in 35 L. R. A. (N. S.) 762, on effect of conveyance of land held adversely.]

(b) The mere fact of knowledge of an adverse claim by defendant, unaccompanied by possession in him, will not operate as a bar under the statute of limitations to plaintiff's right of action. The adverse claim must be accompanied by such invasion of rights of the opposite party as to give him a cause of action, which, having failed to prosecute, he is presumed to have surrendered.—*Abell v. Harris*, 11 G. & J. 367. [*Cited and annotated* in 15 L. R. A. (N. S.) 1213, on necessity for color of title, not ex-



pressly made a condition by statute, in adverse possession.]

### § 15. Entry on land.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 16. Acts of ownership in general.

#### *Cross-Reference.*

Acts done after commencement of action, see "Action," § 65.

(a) Defendant's predecessors took possession of a lot formerly belonging to a city, and maintained a stable thereon for more than 20 years. The lines of the lot were marked out by the city's officials as appurtenant to the stable, and then assessed to such occupants according to the square feet in the lot so marked out, after which the occupants paid the taxes thereon for six successive years. *Held*, that they thereby acquired a valid title to such lot by adverse possession.—*Baltimore City v. Rowe* (107 Md. 704 (memo. decision), 67 Atl. 93 (full report of case); *Rowe v. Baltimore City*, *Ibid*).

(b) Evidence of an entry for survey does not show such open, continued, notorious and adverse possession as will bar an older title.—*Beatty v. Mason*, 30 Md. 409. [*Cited and annotated* in 15 L. R. A. (N. S.) 1190, 1196, 1201, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

(c) Mere going upon a tract of land, being a wild and mountainous one, and cutting timber, where any one cut who felt so disposed, or giving permission to cut, and offering to sell the land, going on it, walking over it, locking up a house, and carrying away the key, are not sufficient to show adverse possession under Acts 1852, c. 177, § 2 (Code, art. 75, § 79), which provides that acts of user and ownership, other than inclosure, may be given in evidence to prove adverse possession.—*Thistle v. Frostburg Coal Co.*, 10 Md. 129. [*Cited and annotated* in 14 L. R. A. (N. S.) 291, on witness's right to state who was possessor of property; in 15 L. R. A. (N. S.) 1192, 1196, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

### § 17. Use and occupation.

#### *Cross-Reference.*

Occasional or temporary use or occupation, see post, § 24.

#### *Annotation.*

Necessity of actual occupancy.—15 L. R. A. (N. S.) 1198, note.

### § 18. Residence.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 19. Inclosure.

#### *Cross-References.*

Evidence, see post, § 27.

Instructions, see post, § 116.

Interruption of possession, see post, §§ 46-49.

(a) Where the land in dispute is within the boundaries of defendant's deed, a fence erected by him within his lines, and for his own purposes, is not an inclosure of plaintiff, an adjoining owner, and hence affords no evidence of adverse possession in the latter.—*Storr v. James*, 84 Md. 282, 35 Atl. 965.

(b) In order to prove title to real estate by undisputed possession for more than 20 years, it is not necessary, since act 1852, c. 177, § 2 (Code, art. 75, § 79), to prove that the lands have been inclosed all that time.—*Warner v. Hardy*, 6 Md. 525. [*Cited and annotated* in 19 L. R. A. (N. S.) 438, on admissibility of record, or copy of record, to prove deed under which party offering it claims.]

(c) Although a legal owner of land may never have been in actual possession of any part of it, yet the exclusive and unmixed possession for more than 20 years, by a wrongdoer, without actual inclosure, will not be a bar to an ejectment by the former.—*Hoye v. Swan*, 5 Md. 237. (For Md. statutory provision as to necessity for inclosure in adverse possession, see Code, art. 75, § 79.) [*Cited and annotated* in 15 L. R. A. (N. S.) 1243, 1245, 1246, 1250, on necessity for color of title, not expressly made a condition by statute, in adverse possession; in 35 L. R. A. (N. S.) 762, on effect of conveyance of land held adversely.]

(d) The fencing of three sides of an oblong or square piece of land is not a sufficient inclosure to make an adverse possession, so

as to vest a title in a wrongdoer as against the real owner, though such fences exclude the latter from the use and enjoyment of the land.—*Armstrong v. Risteanu*, 5 Md. 256, 59 Am. Dec. 115. (For Md. statutory provision as to necessity for inclosure in adverse possession, see Code, art. 75, § 79. [*Cited and annotated in 15 L. R. A. (N. S.) 1190, 1192, 1245, 1257, on necessity for color of title, not expressly made a condition by statute, in adverse possession.*]

(e) Actual inclosure in cases of mixed possession is necessary to defeat the title of the real owner; it makes no difference between him and the wrongdoer whether he is in actual possession of any part of the land or not, for in either case the title by possession holds only to the extent of actual inclosure.—*Armstrong v. Risteanu*, 5 Md. 256, 59 Am. Dec. 115. (For Md. statutory provision as to necessity for inclosure in adverse possession, see Code, art. 75, § 79.) [*Cited and annotated in 15 L. R. A. (N. S.) 1190, 1192, 1245, 1257, on necessity for color of title, not expressly made a condition by statute, in adverse possession.*]

(f) If plaintiff's grant operates by relation from the date of the certificate, and overreaches an elder grant for the same land to defendant, the entry of the grantee under the elder grant, and the possession by him and those claiming under him, is without right, and cannot bar plaintiff, unless such possession was by actual inclosures for 20 years prior to the bringing of the ejectment.—*Hammond v. Warfield*, 2 H. & J. 151. (For Md. statutory provision as to necessity for inclosure in adverse possession, see Code, art. 75, § 79.)

(g) Where the defendant, in an action of ejectment, was proved to be in possession of 100 acres of land, by inclosures and cultivation for 15 years, and then enlarged his inclosures so as to include 150 acres, and possessed the same, so enlarged by inclosures, for six years thereafter, claiming the same as his own, it was held that he was entitled to the 100 acres by adverse possession.—*Hall v. Gittings*, 2 H. & J. 151.

(h) Where land is claimed by adverse possession alone, without title, the claimant must show an exclusive possession by inclosure.

For cases in this digest, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

—*Davidson v. Beatty*, 3 H. & McH. 594. (For Md. statutory provision as to necessity for inclosure in adverse possession, see Code, art. 75, § 79.) [*Cited and annotated in 15 L. R. A. (N. S.) 1196, 1243, 1246, on necessity for color of title, not expressly made a condition by statute, in adverse possession*]; *Cresap v. Hutson*, 9 Gill 269 [*Cited and annotated in 33 L. R. A. (N. S.) 925, on adverse possession due to ignorance or mistake as to boundary; in 35 L. R. A. (N. S.) 762, on effect of conveyance of land held adversely*]; *Hoye v. Swan*, 5 Md. 237 [*Cited and annotated in 15 L. R. A. (N. S.) 1243, 1245, 1246, 1250, on necessity for color of title, not expressly made a condition by statute, in adverse possession; in 35 L. R. A. (N. S.) 762, on effect of conveyance of land held adversely.*]

## § 20. Improvements.

## § 21. Cultivation.

## § 22. Pasturage.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 23. Cutting timber.

### Cross-Reference.

See § 16, ante.

(a) Cutting and selling timber from time to time is not evidence of adverse possession, but is a mere succession of trespasses.—*Peters v. Tilghman & Purnell*, 111 Md. 227, 73 Atl. 726.

## § 24. Occasional or temporary use or occupation.

(a) Occasionally digging sand on the land and selling it does not amount to ouster.—*Parker v. Wallis*, 60 Md. 15, 45 Am. Rep. 703.

## § 25. Possession of agent, tenant, or vendee.

### Cross-References.

Evidence, see post, § 27.

Instructions, see post, § 116.

(a) One who occupies land through permission of the owner, claiming it by adverse possession, thereby adversely interrupt the title of the owner.—*Inst. of Port Deposit*, 569, 40 Atl. 261.

For cases in this digest, see same title and section number in Decennial and Key Number Digests, and cross-references therein.

### § 26. Lawful possession.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 27. Evidence.

(a) Where a fence is located on a certain plat, and known to the witness, he may give evidence of any use or cultivation of the land in any particular direction from the fence or other object located, without any particular location of the place where the acts of ownership were performed.—*Armstrong v. Risteau*, 5 Md. 256, 59 Am. Dec. 115. [*Cited and annotated* in 15 L. R. A. (N. S.) 1190, 1192, 1245, 1257, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

### (C) VISIBLE AND NOTORIOUS POSSESSION.

#### Cross-References.

Instructions, see post, § 116.

Questions for jury, see post, § 115.

### § 28. Necessity.

#### Annotation.

Necessity of openness, visibility, and notoriety.—15 L. R. A. (N. S.) 1200, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 29. Open and visible character of possession.

### § 30. Notoriety of possession.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 31. Knowledge of or notice to former owner.

#### Cross-Reference.

Question for jury, see post, § 115.

(a) In order that the statute may operate on the rights of the true owner, where adverse possession is pleaded, the possession must not only be adverse, exclusive, and continuous, but must be of such character as may give the owner some knowledge or means of knowledge that the possession is adverse.—*Hackett v. Webster*, 97 Md. 404, 55 Atl. 480. [*Cited and annotated* in 15 L. R. A. (N. S.) 1190, 1196, 1200, 1246, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

(b) A possession, to be adverse, must be so open, notorious, and important as to give notice to parties that a claim of right is intended thereby; that the right of the true owner is invaded intentionally, and with a purpose to assert a claim of title adversely to his.—*Beatty v. Mason*, 30 Md. 409. [*Cited and annotated* in 15 L. R. A. (N. S.) 1190, 1196, 1201, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

(c) In replevin for a negro boy, defendant offered evidence that, for more than three years prior to the institution of the suit, the person under whom he claimed title had possession of the boy, claiming title to him, and that plaintiff had knowledge of such adverse claim for more than three years prior to the commencement of the action. *Held* that, though this was evidence of the adverse claim and holding of defendant's grantor, it was no evidence of defendant's adverse claim and holding, nor that the intestate of the plaintiff, who was an administratrix, had any knowledge of such adverse claim.—*Abell v. Harris*, 11 G. & J. 367. [*Cited and annotated* in 15 L. R. A. (N. S.) 1213, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

(d) In an action of replevin brought by G., as executor of W., to which, on G.'s death, the administrator de bonis non of W. was made a party, defendants set up title to the property under an adverse claim as owners for more than three years, and the court restricted the jury, by the form of its instruction, to the testator's knowledge of such claim and to that of the administrator de bonis non, and did not submit to them the knowledge of the executor, though he had filled that office for more than three years. *Held*, that the fact that defendant's intestate had returned said property to the assessors as his own, and that it was recorded as such, and that the same property had not been returned to the assessors as the property of plaintiff or his testator, should not be considered as circumstances from which the jury might infer that plaintiff, at the time of the bringing of the suit, was aware

of defendant's adverse claim.—*Cole v. Hebb*, 7 G. & J. 20.

(e) In an action of replevin brought by G., as executor of W., to which, on G.'s death, the administrator de bonis non of W. was made a party, defendants set up title to the property under an adverse claim as owners for more than three years, and the court, in charging as to knowledge of the claim, restricted the jury to the knowledge of the testator and administrator de bonis non, and did not submit to them the knowledge of the executor, though he had filled that office for more than three years. *Held*, error.—*Cole v. Hebb*, 7 G. & J. 20.

### § 32. Filing or recording notice.

### § 33. Evidence.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## (D) DISTINCT AND EXCLUSIVE POSSESSION.

### Cross-References.

Instructions, see post, § 116.

Interruption of possession, see post, §§ 46-49.

Pleading, see post, § 110.

Question for jury, see post, § 115.

### § 34. Necessity.

#### Annotation.

Necessity of exclusiveness.—15 L. R. A. (N. S.) 1196, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 35. Possession distinct from that of others.

(a) The possession by one of several defendants, claiming as lessees of distinct lots, cannot inure to the benefit of another.—*Cassey v. Inloes*, 1 Gill 430, 39 Am. Dec. 658. [*Cited and annotated* in 18 L. R. A. 781, on what title or interest will support ejectment.]

### § 36. Possession exclusive of others.

(a) Where a party claimed title to land by adverse possession, and the evidence showed that the land had been an open common for 50 years, over which many persons passed and repassed at will, and tenants of adjoining land of the claimant were in the habit of passing with carts, it was *held* that such user of outlying uninclosed lands does not

constitute acts of ownership, such as the law requires to form a basis of title by possession.—*Gittings v. Moale*, 21 Md. 135.

(b) Possession, to be adverse, must be exclusive.—*Stump v. Henry*, 6 Md. 201, 61 Am. Dec. 300.

### § 37. Possession exclusive of former owner.

### § 38. Evidence.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## (E) DURATION AND CONTINUITY OF POSSESSION.

### Cross-References.

Effect of reduction of statutory period, see ante, § 3.

Instructions, see post, § 116.

Payment of taxes, see post, § 93.

Pleading, see post, § 110.

Questions for jury, see post, § 115.

To establish highway by prescription, see "Highways," § 6.

### § 39. Time requisite for acquisition of rights.

### § 40.—In general.

(a) In order to recover damages for the obstruction of a private right of way in the absence of an express grant, plaintiff must show an adverse, exclusive, and uninterrupted enjoyment for 20 years.—*Cox v. Forrest*, 60 Md. 74. [*Cited and annotated* in 8 L. R. A. (N. S.) 151, on burden of showing permissiveness of use on which prescriptive easement is claimed; in 22 L. R. A. (N. S.) 881, 889, on abandonment or loss of private way by non-user or improvements inconsistent with use.]

(b) Act of 1852, c. 177 (Code, art. 75, § 79), does not diminish the time of 20 years requisite to obtain a possessory title.—*Ridgely v. Bond*, 17 Md. 14.

### § 41.—Under claim or color of title.

#### Cross-Reference.

Validity and sufficiency of title or claim, see post, §§ 70-82.

(a) Where the trustees of a church went into possession of land conveyed to them by a void deed and remained in undisputed possession for over 20 years, they acquired good title which a purchaser from them was bound to accept.—*Regents of University of Maryland v. Trustees of Calvary M. E. Church South in City of Baltimore*, 104 Md.

635, 65 Atl. 398. [*Cited and annotated in 15 L. R. A. (N. S.) 1259, on necessity for color of title, not expressly made a condition by statute, in adverse possession.*]

(b) Fourteen years is a space of time too short to justify the presumption of a deed to one who claims to have taken pedal possession of land under color of title.—*Baltimore Chemical Manuf'g Co. v. Dobbin*, 28 Md. 210.

#### § 42. Beginning of adverse possession.

*Cross-References.*

Payment of taxes, see post, § 89.

Public lands granted to individuals, see ante, § 7.

Possession by purchaser pendente lite, see "Lis Pendens," § 26.

(a) Where proceedings to foreclose a mechanic's lien on a bridge and its abutments did not purport to convey the land on which the abutments rested, neither the decree, nor mere ownership of the bridge and abutments by a purchase thereunder, constituted evidence of the beginning of adverse possession of such land.—*Nicolai v. City of Baltimore*, 100 Md. 579, 60 Atl. 627. [*Cited and annotated in 12 L. R. A. (N. S.) 1144, on right of permissive possessor to acquire title by adverse possession.*]

#### § 43. Tacking successive possessions.

*Cross-References.*

Possession combined with payment of taxes, see post, § 93.

Effect of statute of frauds, see "Frauds, Statute of," § 55.

(a) Tort-feasors cannot tack wrongful possessions so as to create title by adverse possession.—*Peters v. Tilghman & Purnell*, 111 Md. 227, 73 Atl. 726.

(b) By disseisin the disseisor acquires an inchoate title in and to the property of which he becomes possessed, which is so far recognized in the law that he can transmit it to those in privity with him.—*Wickes v. Wickes*, 98 Md. 307, 56 Atl. 1017; *Stevens v. Wickes*, *Ibid*; *Wickes v. Stevens*, *Ibid*.

(c) In this country, entry is not tolled by descent cast.—*Wickes v. Wickes*, 98 Md. 307, 56 Atl. 1017; *Stevens v. Wickes*, *Ibid*; *Wickes v. Stevens*, *Ibid*.

(d) Adverse possession of property inures, at the death of the possessor, to the benefit of her heirs at law.—*Wickes v. Wickes*, 98

Md. 307, 56 Atl. 1017; *Stevens v. Wickes*, *Ibid*; *Wickes v. Stevens*, *Ibid*.

(e) A wife devised a farm to her husband for his life, with remainder in fee to her nephew. The will was admitted to probate, but was not executed in compliance with the statutory requirements. The husband entered into possession under claim of title, and continued in possession for 13 years, and then joined the nephew in a sale of the farm, and the purchaser entered and held possession for 14 years. Then, in ejectment by the heirs-at-law of the testatrix against the purchaser, *held*, that the husband's possession was adverse and exclusive, and the purchaser's possession was tacked thereto, and both constituted an effectual adverse possession.—*Hanson v. Johnson*, 62 Md. 25, 50 Am. Rep. 199. [*Cited and annotated in 19 L. R. A. 839, 852, on adverse possession against remaindermen and owners of future estates.*]

(f) Where one has such possession of lands as is insufficient to give title by adverse possession, and another succeeds him, holding the land in the same manner, the imperfect possession of the former, when united to that of the latter, cannot make it adverse, continuous, and exclusive, as against the real owner.—*Hoye v. Swan*, 5 Md. 237. [*Cited and annotated in 15 L. R. A. (N. S.) 1243, 1245, 1246, 1250, on necessity for color of title, not expressly made a condition by statute, in adverse possession; in 35 L. R. A. (N. S.) 762, on effect of conveyance of land held adversely.*]

(g) When the statute of limitations is pleaded, and the adverse possession was in different persons successively, it must be shown that a privity existed between them.—*Armstrong v. Risteau*, 5 Md. 256, 59 Am. Dec. 115. [*Cited and annotated in 15 L. R. A. (N. S.) 1190, 1192, 1245, 1257, on necessity for color of title, not expressly made a condition by statute, in adverse possession.*]

#### § 44. Continuity in general.

(a) A plaintiff in ejectment, failing to show continuous possession, *held* not to have established a title otherwise good within Code, art. 75, § 79, providing that in actions where title to land is in question, it

shall not be necessary to prove that the land has been patented, but a patent will be presumed in favor of one showing a title otherwise good.—*Joseph v. Bonaparte*, 118 Md. 591, 85 Atl. 962.

(b) Where the dedication of a park is claimed, the fact that the original owner gave a mortgage on its property, excepting that portion theretofore laid out as a public park and dedicated to public use, does not interfere with the owner's claim by adverse possession, where it occupied the property for over 30 years after the date of the mortgage, and there was no evidence of acceptance of the dedication on the part of the public.—*Canton Co. of Baltimore v. City of Baltimore*, 106 Md. 69, 66 Atl. 679, reargument denied, 106 Md. 69, 67 Atl. 274.

(c) Possession of a part of the land by a party entitled to the whole is possession of the whole, and he cannot be barred by adding together the different possessions and acts of the defendant, at long intervals, so as to make out 20 years.—*Armstrong v. Risteau*, 5 Md. 256, 59 Am. Dec. 115. [*Cited and annotated* in 15 L. R. A. (N. S.) 1190, 1192, 1245, 1257, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

#### § 45. Suspension of statute of limitations.

##### *Cross-References.*

Absence from state or nonresidence of parties as affecting limitations, see "Limitation of Actions," §§ 84-94.

Commencement of action as affecting limitations, see "Limitation of Actions," §§ 115-138.

Pendency of action or legal proceeding as affecting limitation, see "Limitation of Actions," §§ 105, 106.

(a) In an action of ejectment, where there was evidence that the defendant partially removed his fences at times to enable himself and others to pass through by his permission, and that the fences were partially destroyed during the winter, but renewed in the spring, to charge that proof of continuous possession by the defendant was necessary to defeat the plaintiff's claim was held to be erroneous, as calculated to mislead the jury.—*Morrison v. Hammond*, 27 Md. 604.

(b) Adverse possession by an execution

debtor, after the sale of the land on execution, becomes interrupted by an admission in a suit with third parties relative to the land, brought within 20 years, that the land had been sold on execution against him, and that title thereto passed to the purchaser.—*Stump v. Henry*, 6 Md. 201, 61 Am. Dec. 300. [*Cited and annotated* in 15 L. R. A. (N. S.) 1190, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

#### § 46. Interruption of possession.

##### *Cross-Reference.*

Evidence, see post, § 57.

#### § 46(a).—In general.

(a) In an action of ejectment where there was evidence that the defendant partially removed his fences at times to enable himself and others to pass through by his permission, and that the fences were partially destroyed during the winter, but renewed in the spring, to charge that proof of continuous possession by the defendant was necessary to defeat the plaintiff's claim was held to be erroneous, as calculated to mislead the jury.—*Morrison v. Hammond*, 27 Md. 604.

(b) Adverse possession by an execution debtor, after the sale of the land on execution, becomes interrupted by an admission in a suit with third parties relative to the land, brought within 20 years, that the land had been sold on execution against him, and that title thereto passed to the purchaser.—*Stump v. Henry*, 6 Md. 201, 61 Am. Dec. 300. [*Cited and annotated* in 15 L. R. A. (N. S.) 1190, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

(c) Possession of a slave pending suit to have a bill of sale of the slave vacated by complainant is adverse to the title of defendant, who, by final decree vacating the bill of sale, is adjudged the true owner.—*Abell v. Harris*, 11 G. & J. 367. [*Cited and annotated* in 15 L. R. A. (N. S.) 1213, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

#### § 47.—By former owner.

(a) An entry, in order to restore to a

disseised person the possession of the premises, must be an actual entry upon some part of the land within the period of limitations, and must be shown to have been made with a clear and unequivocal intent to invade and challenge the right of the adverse possessor and to retake possession.—*Wickes v. Wickes*, 98 Md. 307, 56 Atl. 1017; *Stevens v. Wickes*, *Ibid*; *Wickes v. Stevens*, *Ibid*.

(b) Land was patented to plaintiff's grantors. Afterwards it and other land was patented to defendant's grantors, who went into possession of part of it. Later plaintiff's grantors entered peaceably on it, in assertion of their title, and persons in possession of parts of it, in acknowledgment of the right of said grantors to the possession, took from them leases of the parts of which they had possession. *Held*, that the possession of all the land embraced in the patent to plaintiff's grantors, and who were the rightful owners thereof, was thus restored to them, arresting the running of the statute, and giving the necessary possession for maintenance of an action of trespass.—*Schlossnagle v. Kolb*, 97 Md. 285, 54 Atl. 1006.

#### § 48.—By third persons.

#### § 49.—By public.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 50. Recognition of title of former owner.

##### *Cross-References.*

Affecting hostile character of possession, see post, § 60.

After perfection of title, see post, § 109.

(a) A lessee for the term of 99 years, renewable forever, died, and S. entered upon the premises as a trespasser or disseisor. Before his possession had ripened into a perfect title by the lapse of 20 years, he voluntarily administered upon the estate of the lessee, and assigned and took a re-assignment to himself of the lease, by deeds which he placed upon record, and in which the title of the lessor was carefully recited and recognized. S. died, leaving a will, by which he gave all his estate to his wife, with remainder in specific portions to his children. After his death letters testa-

mentary on his estate were granted to his wife as executrix under the will. In an action of ejectment brought by the grantee of the reversion against the parties in possession, claiming under S., *held*, that, by administering on the estate of the lessee and placing the deeds of assignment on record, S. became the tenant for the lessor, and his holding thenceforth until his death was consistent with the title of his landlord.—*Campbell v. Shipley*, 41 Md. 81. [*Cited and annotated in* 53 L. R. A. 946, 950, 951, 952, on tenant's right to acquire title not inconsistent with landlord's when tenancy commenced.]

#### § 51. Adjudication as to title or right.

##### *Cross-References.*

See post, § 113.

Questions for jury, see post, § 115.

(a) Possession of a slave pending suit to have a bill of sale of the slave vacated by complainant is adverse to the title of defendant, who, by final decree vacating the bill of sale, is adjudged the true owner.—*Abell v. Harris*, 11 G. & J. 367. [*Cited and annotated in* 15 L. R. A. (N. S.) 1213, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

(b) Adverse possession by an execution debtor, after the sale of the land on execution, becomes interrupted by an admission in a suit with third parties relative to the land, brought within 20 years, that the land had been sold on execution against him, and that title thereto passed to the purchaser.—*Stump v. Henry*, 6 Md. 201, 61 Am. Dec. 300. [*Cited and annotated in* 15 L. R. A. (N. S.) 1190, on necessity for color of title not expressly made a condition by statute, in adverse possession.]

#### § 52. Purchase of outstanding title or claim.

(a) A lessee for the term of 99 years, renewable forever, died, and S. entered upon the premises as a trespasser or disseisor. Before his possession had ripened into a perfect title by the lapse of 20 years, he voluntarily administered upon the estate of the lessee, and assigned and took a re-assignment to himself of the lease, by deeds

which he placed upon record, and in which the title of the lessor was carefully recited and recognized. S. died, leaving a will, by which he gave all his estate to his wife, with remainder in specific portions to his children. After his death letters testamentary on his estate were granted to his wife as executrix under the will. In an action of ejectment brought by the grantee of the reversion against the parties in possession, claiming under S., *held*, that, by administering on the estate of the lessee and placing the deeds of assignment on record, S. became the tenant for the lessor, and his holding thenceforth until his death was consistent with the title of his landlord.—*Campbell v. Shipley*, 41 Md. 81. [Cited and annotated in 53 L. R. A. 946, 950, 951, 952, on tenant's right to acquire title not inconsistent with landlord's when tenancy commenced.]

### § 53. Abandonment.

#### *Cross-Reference.*

After acquisition of title, see post, § 109.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 54. Completion of period.

(a) S., the grandfather of the plaintiffs in an ejectment suit, was in actual, adverse, and notorious possession by inclosure of a piece of land for ten years. One of the heirs continued to live in a house on the property for 22 years. Afterwards, when the house burned, she and plaintiffs, her children, moved to neighboring premises, where she died 15 years later. While there she still claimed ownership of the land. At the time of the action plaintiffs were the only living descendents of S., but no one had been in actual possession of the property since the house burned until within less than 20 years prior to the suit. *Held*, that plaintiffs' mother acquired title by such possession as to give right, and continuing for more than 20 years, her legal seisin continued after she removed from the property, and her title descended on her death to the plaintiffs, her heirs at law, so as to give them prima facie title sufficient to support the action of ejectment.—*Doe v. Fletcher*, 37 Md. 430.

### § 55 Disability or death of former owner.

#### *Cross-References.*

Against whom prescription may be claimed in general, see ante, § 4.

Burden of proof, see post, § 57.

Coverture, see "Husband and Wife," § 69½.

Disabilities affecting limitations, see "Limitation of Actions," §§ 70-79.

Infancy, see "Infants," § 24.

Insanity, see "Insane Persons," § 59.

### § 56. Extension of period.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 57. Evidence.

(a) It is competent to show, as affecting the question of uninterrupted possession, that one claiming property by adverse possession received rent for the use of the premises, and that persons who built thereon obtained his permission to do so.—*Jacob Tome Inst. of Port Deposit v. Crothers*, 87 Md. 569, 40 Atl. 261.

### (F) HOSTILE CHARACTER OF POSSESSION.

#### *Cross-References.*

Instructions, see post, § 116.

Questions for jury, see post, § 115.

### § 58. Necessity.

#### *Annotation.*

Necessity of hostility.—15 L. R. A. (N. S.) 1192, note.

(a) A prayer for instruction that if plaintiff's possession of the land sued for was "uninterrupted and exclusive" for 40 years, etc., he is entitled to recover, is defective in omitting the word "adverse."—*Winter v. White*, 70 Md. 305, 17 Atl. 84.

### § 59. Possession consistent with that of another, and possession becoming adverse after amicable entry.

#### *Cross-References.*

See "Joint Tenancy," § 9; "Landlord and Tenant," § 66; "Life Estates," § 8; "Mortgages," § 143; "Tenancy in Common," § 15.

Evidence, see post, § 85.

### § 60.— In general.

#### *Cross-References.*

Evidence, see post, § 85.

As between vendor and purchaser, see post, § 63.



(a) Where a railroad constructed the abutments to a bridge under a license from the landowner, and not under a claim of title, it could not acquire the land, on which the abutments rested, by adverse possession, in the absence of evidence of ouster.—*Nicolai v. City of Baltimore*, 100 Md. 579, 60 Atl. 627. [*Cited and annotated in 12 L. R. A. (N. S.) 1144, on right of permissive possessor to acquire title by adverse possession.*]

(b) A hostile invasion of another's rights is one of the elements of title by adverse possession. If there be consent on the part of the owner, the entry for the purpose of doing the act is not tortious.—*Armstrong v. Risteanu*, 5 Md. 256, 59 Am. Dec. 115. [*Cited and annotated in 15 L. R. A. (N. S.) 1190, 1192, 1245, 1257, on necessity for color of title, not expressly made a condition by statute, in adverse possession.*]

(c) When a party's first entry upon land, and his occupation thereof, were by permission of the owner, the legal presumption is that his subsequent occupation was also permissive, and not adverse, unless some act of his is proved which constitutes a disseisin of the owner.—*Gwynn v. Jones*, 2 G. & J. 173. [*Cited and annotated in 53 L. R. A. 948, 949, 951, on tenant's right to acquire title not inconsistent with landlord's when tenancy commenced.*]

#### § 61.—By persons in fiduciary relations.

##### *Cross-References.*

See "Trusts," § 136.

Evidence, see post, § 85.

Existence of trust as affecting limitations, see "Limitation of Actions," §§ 102, 103.

#### § 62.—By or against heirs, devisees, or surviving husband or wife, or their grantees.

##### *Cross-Reference.*

Evidence, see post, § 85.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest

#### § 63.—By vendor or purchaser.

##### *Cross-References.*

Color of title, see post, §§ 71, 72.

Evidence, see post, § 85.

Question for jury, see post, § 115.

By grantee, see post, § 84.

(a) A. conveyed a leasehold interest to B., and shortly thereafter entered on the property with his family, and continued in possession for more than 20 years, paying taxes and ground rent, and allowing his family to make valuable improvements. *Held*, in ejectment by claimants under A., that his possession was adverse and conclusive as against B. and those claiming under him.—*Waltemeyer v. Baughman*, 63 Md. 200.

(b) A vendee in possession under a contract to purchase cannot claim under the statute of limitations.—*Dean v. Brown*, 23 Md. 11, 87 Am. Dec. 555. [*Cited and annotated in 15 L. R. A. (N. S.) 1190, 1194, 1208, 1210, 1236, on necessity for color of title, not expressly made a condition by statute, in adverse possession.*]

(c) Where a lease for 99 years, renewable forever, contains a clause of re-entry for nonpayment of rent, and the lessor and those claiming under him have been for 20 years in the uninterrupted, notorious, and adversary possession, they must, in analogy to the statute of limitation, be regarded in legal contemplation as rightfully holding possession against all others.—*Alexander v. Walter*, 8 Gill 239, 50 Am. Dec. 688.

#### § 64.—By donor or donee, or bailor or bailee.

##### *Cross-References.*

Evidence, see post, § 85.

Parol gift as color of title, see post, § 70.

##### *Annotation.*

Right of bailee to assert against his bailor the hostile, adverse, paramount title of a third person.—33 L. R. A. (N. S.) 681, note.

Adverse possession by donee under parol gift.—35 L. R. A. 835, note.

(a) Where the owner of land offers to dedicate it to the public as a park, but continues in possession excluding the public for a period of over 20 years, he acquires good prescriptive title to the tract.—*Canton Co. of Baltimore v. City of Baltimore*, 106 Md. 69, 66 Atl. 679; reargument denied, 106 Md. 69, 67 Atl. 274.

(b) Where there was evidence tending to show that the defendant's possession of personal property, or that of his testator or intestate, commenced by permission of

the plaintiff, or his testator or intestate, without any absolute right of property passing to the defendant or those whom he represented, at the time his or their possession commenced, it was *held* that it was not competent for the defendant, in an action of replevin for the recovery of such property, to require the court to instruct the jury to find the issue joined upon the plea of limitations for the defendant, although more than three years had elapsed prior to the commencement of the action, unless the jury were also instructed to find the knowledge by the plaintiff, or his testator or intestate, three years before the commencement of the suit, of an adverse claim of title to such property by the defendant, or those under whom he claimed.—*Cole v. Hebb*, 7 G. & J. 20.

(c) The right of a plaintiff to recover property is not barred by the possession of the defendant, accompanied by a claim of title to the property, for more than three years before the institution of the suit, if the possession was originally acquired by loan, and the plaintiff has no knowledge of the adversary claim of the defendant three years before the suit was brought.—*Callis v. Tolson*, 6 G. & J. 80.

### § 65. Entry and possession by mistake.

#### *Cross-References.*

Mistake in extending possession to boundaries or fences, see post, § 66.  
Necessity of inclosure, see ante, § 19.  
Question for jury, see post, § 115.  
Color of title, see post, § 80.

(a) An entailed estate was sold in partition proceedings as if it had been an estate in fee simple, which the parties seemed to regard it. The widow of the deceased tenant in tail bought the property, and went into possession thereof and occupied the same during the full statutory period. At her death the property descended to her heirs, children and grandchildren, one of whom was the issue in tail according to the form of the original gift. *Held*, that the possession of the widow, and, after her death, of the heirs, being adverse to the right of the issue in tail, and dependent on the destruction of the estate tail, could not be regarded as a constructive possession of the issue in tail, so as to toll limitations in

her favor, and enable her to claim under the gift as tenant in tail and against the coheirs.—*Wickes v. Wickes*, 98 Md. 307, 56 Atl. 1017; *Stevens v. Wickes*, *Ibid*; *Wickes v. Stevens*, *Ibid*.

### § 66. Extension of possession to boundaries or fences.

#### *Cross-References.*

Establishment of boundaries, see post, § 108.

Evidence, see post, § 85.

Extent of possession, see post, § 100.

Limitation of actions for relief on ground of mistake, see "Limitation of Actions," § 96.

Color of title, see post, § 80.

#### *Annotation.*

Adverse possession due to ignorance or mistake as to boundary.—21 L. R. A. 829; 33 L. R. A. (N. S.) 923, note.

(a) A lessee in a lease of a city lot for 90 years, renewable forever, having a house standing thereon afterwards found to extend a few inches beyond the line designated in the lease, acquires title to the additional strip by adverse possession, where he goes into possession under the lease, and continuously occupies the house until his death, occurring more than 35 years after the execution of the lease.—*Hiss v. McCabe*, 45 Md. 77.

(b) One who by mistake occupies land with no intention to claim title beyond his true boundary does not acquire title by adverse possession to land beyond the true line.—*Cresap v. Hutson*, 9 Gill 269 [*Cited and annotated* in 33 L. R. A. (N. S.) 925, on adverse possession due to ignorance or mistake as to boundary; in 35 L. R. A. (N. S.) 762, on effect of conveyance of land held adversely]; *Davis v. Furlow*, 27 Md. 536 [*Cited and annotated* in 15 L. R. A. (N. S.) 1187, 1205, 1206, 1208, 1210, on necessity for color of title, not expressly made a condition by statute, in adverse possession; in 33 L. R. A. (N. S.) 924, on adverse possession due to ignorance or mistake as to boundary].

### § 67. Adverse entry.

#### *Cross-Reference.*

Evidence, see post, § 85.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

### § 68. Necessity of claim or color of title.

#### Cross-References.

Evidence, see post, § 85.

Necessity in general, see ante, § 12.

Payment of taxes, see post, § 91.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 69. Validity and sufficiency of title or claim.

#### Cross-References.

Effect as evidence of possession, see post, §§ 112, 114.

Evidence, see post, § 85.

Questions for jury, see post, § 115.

Disability of grantor affecting limitations, see "Limitation of Actions," § 74.

Right to have defective acknowledgment corrected after running of limitations, see "Acknowledgment," § 46.

### § 70.— In general.

(a) A father devised land to his son R., with a limitation over to his son C., in case R. should die without issue. R. died without issue, and C. conveyed by deed to L., which deed was duly recorded. *Held*, that, though the limitation was void under the law in force at the time, as being after an indefinite failure of issue, yet the deed gave L. color of title, and his entry thereunder vested in him adverse possession of the whole tract.—*Lurman v. Hubner*, 75 Md. 268, 23 Atl. 646. [*Cited and annotated* in 38 L. R. A. (N. S.) 27, on what is a marketable title.]

(b) The title of one who for nearly 40 years has held the fee to certain land subject to a 99-years lease, and has exclusively received the rents therefrom, is not impaired by the fact that the chancery records fail to show that a certain sale, evidenced by a remote deed in his chain of title purporting to be executed by a trustee, was ratified by the court.—*Rieman v. Wagner*, 74 Md. 478, 22 Atl. 72.

(c) Defendant testified that she was put in possession by the former owner, who told her to go there and live, and take care of the property, and not go away and leave it, as another person had done; that she went to live on the land in 1851, and had paid taxes thereon since 1870; that the owner helped her build the house on the premises; that she had never paid any rent; and that the line of inclosures had

never been changed. *Held*, error not to grant plaintiff's prayer to instruct the jury that defendant had given no proof of color of title legally sufficient to prove title in her by adverse possession.—*Walsh v. McIntire*, 68 Md. 402, 13 Atl. 348.

### § 71.— Validity and sufficiency of instruments in general.

#### Cross-References.

Description of property, see post, § 80.

Evidence, see post, § 85.

Persons executing instrument in general, see post, § 81.

(a) Conveyance of land in fee simple by one who has no title is such color of title as will support adverse possession.—*Allen v. Van Bibber*, 89 Md. 434, 43 Atl. 758.

(b) Where one goes on land under a deed and by color of title in 1848, and lives there until 1894, he acquires title by adverse possession, though there may be defects in the deed to him or in the deed to his grantor.—*Erdman v. Corse*, 87 Md. 506, 40 Atl. 107. [*Cited and annotated* in 15 L. R. A. (N. S.) 1215, on necessity for color of title, not expressly made a condition by statute, in adverse possession; in 38 L. R. A. (N. S.) 27, 36, on what is a marketable title.]

(c) Though a conveyance of land to the trustees of a Catholic church for a cemetery be void for failure to show on its face the purpose thereof, adverse possession thereunder for 20 years perfects the title as against all persons not under legal disabilities.—*Gump v. Sibley*, 79 Md. 165, 28 Atl. 977. [*Cited and annotated* in 27 L. R. A. (N. S.) 388, 389, on adverse possession by religious society.]

### § 72.— Bonds and contracts to convey.

#### Cross-Reference.

Description of property, see post, § 80.

(a) One holding land under a contract for sale from the husband of one of two tenants in common, with the consent and approbation of his wife, has not possession of such a character as to bar the right of entry of a purchaser under a deed duly acknowledged and recorded, and executed after the death of said husband by both the tenants in common, or to raise a presumption of a grant to those claiming under the contract, or any title or interest in the land

that a court of law or equity can protect.—*Dean v. Brown*, 23 Md. 11, 87 Am. Dec. 555. [Cited and annotated in 15 L. R. A. (N. S.) 1190, 1194, 1208, 1210, 1236, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

**§ 73.—Patents, grants, certificates, surveys, and plats.**

*Cross-Reference.*

Registration, see post, § 82.

(a) A land-office warrant issued by the state of Virginia, and a patent granted thereon for lands supposed to be in Virginia, are not effectual, as color of title to land in Maryland.—*Baker v. Swan*, 32 Md. 355. [Cited and annotated in 15 L. R. A. (N. S.) 1215, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

**§ 74.—Judgments and execution and judicial sales.**

*Cross-References.*

Description of property, see post, § 80.

Foreclosure of mortgage, see post, § 76.

Partition, see post, § 75.

Registration, see post, § 82.

(a) A grantee in a deed of a minor's property, made under order of court, who enters on the property in good faith, acquires adverse possession, although the deed may be void.—*Kopp v. Herrman*, 82 Md. 339, 33 Atl. 646. [Cited and annotated in 15 L. R. A. (N. S.) 1215, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

**§ 75.—Partition.**

*Cross-Reference.*

Sale, see ante, § 74.

(a) Where entailed property was sold in partition proceedings, possession of the same under the sale constitutes a complete ouster of the title of the tenant in tail, and sets in motion the running of limitations.—*Wickes v. Wickes*, 98 Md. 307, 56 Atl. 1017; *Stevens v. Wickes*, *Ibid*; *Wickes v. Stevens*, *Ibid*.

(b) Where a purchaser at a partition sale of entailed property went into possession under the sale and trustee's deed, lived on the same and took absolute possession thereof, claimed it as her own under the deed, executed mortgages thereon, and

rented it to one who farmed as her tenant, her taking and holding was under color of title in good faith and under claim of right, and the possession was actual, visible, notorious, continuous, and successive.—*Wickes v. Wickes*, 98 Md. 307, 56 Atl. 1017; *Stevens v. Wickes*, *Ibid*; *Wickes v. Stevens*, *Ibid*.

**§ 76.—Mortgages and mortgage foreclosures.**

**§ 77.—Administrators' and guardians' sales and deeds.**

**§ 78.—Descent and devise.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 79.—Tax sales and tax deeds.**

*Cross-References.*

See post, § 91.

Description of property, see post, § 80.

*Annotation.*

Effect of an invalid tax deed as color of title within general statutes of limitations.—11 L. R. A. (N. S.) 772, note.

Does a void tax deed set in motion special statutes of limitations governing actions to recover lands sold for taxes.—27 L. R. A. (N. S.) 339, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 80.—Description of property.**

*Cross-References.*

Extent of possession, see post, § 100.

Description in power of attorney, see "Principal and Agent," § 10.

(a) A purchaser of land, bounded by lines fixed on the ground, who entered into possession under a deed, and who for more than 20 years continued in the exclusive and actual possession of the land by inclosure on the lines fixed on the ground, asserting his claim to the land as inclosed, acquired title by adverse possession, notwithstanding any error in the deed describing the land.—*Jacobs v. Disharoon*, 113 Md. 92, 77 Atl. 258.

(b) Where a purchaser had acquired title by adverse possession under a claim of right, the fact that a subsequent purchaser of the adjacent land from the same grantor did not discover until later that the purchaser's deed did not include a part of the land to which the purchaser had acquired title by adverse possession was immaterial.

—*Jacobs v. Disharoon*, 113 Md. 92, 77 Atl. 258.

(c) Where defendant and his predecessors have been in actual possession of land for more than 40 years under deeds duly recorded, the descriptions in the most of which correspond with the lines of occupation, it is immaterial that the descriptions in some of the old deeds are defective.—*Bay v. Posner*, 78 Md. 42, 26 Atl. 1084.

### § 81.—Persons executing instruments. *Cross-Reference.*

See ante, § 71.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 82.—Record of instruments. *Cross-References.*

Affecting extent of possession, see post, § 100.

Affecting right to tack successive possessions, see ante, § 43.

Retroactive effect of statute, see ante, § 3.

As notice of fraud affecting limitations against grantor, see "Limitation of Actions," § 100.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 83. Possession under conflicting titles. *Cross-Reference.*

Effect of mixed possession, see post, § 103.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 84. Good faith and diligence. *Cross-References.*

Evidence, see post, § 85.

Instructions, see post, § 116.

Question for jury, see post, § 115.

(a) In an action against one who has maintained 20 years' adverse possession of the real estate in controversy, the refusal of the court to admit competent evidence respecting defendant's and his grantor's knowledge of plaintiff's title is error without prejudice.—*Rutter v. Small*, 68 Md. 133, 11 Atl. 698. [*Cited and annotated in 32 L. R. A. (N. S.) 703, 707, on effect of conveyance by one co-tenant to found adverse possession against others.*]

(b) In an action of ejectment, where plaintiff claimed under a deed from the patentee and defendant claimed by adverse

possession of herself and husband, if plaintiff fraudulently, and with the fraudulent intent of getting possession of the legal title to the land, entered into an arrangement with defendant's husband by which plaintiff was to obtain paper title from the patentee to the tract of which the land in controversy was a part, and plaintiff should retain a part of the tract and make a paper title to defendant to the balance, and at that time defendant's husband had been in peaceful adverse possession of the part now claimed by defendant for 20 years by inclosure, and defendant was to retain possession until plaintiff made her the legal title, the arrangement was not binding on defendant's husband or herself.—*Morgan's Lessee v. Slider*, 22 Md. 267.

### § 85. Evidence.

#### *Cross-Reference.*

Acts and declarations of occupants, see "Evidence," § 273.

(a) Evidence held to show adverse possession of land under a deed giving color of title.—*Cadwalader v. Price*, 111 Md. 310, 73 Atl. 273.

(b) In an action against one who has maintained 20 years' adverse possession of the real estate in controversy, the refusal of the court to admit competent evidence respecting defendant's and his grantor's knowledge of plaintiff's title is error without prejudice.—*Rutter v. Small*, 68 Md. 133, 11 Atl. 698. [*Cited and annotated in 32 L. R. A. (N. S.) 703, 707, on effect of conveyance by one co-tenant to found adverse possession against others.*]

### (G) PAYMENT OF TAXES.

#### *Cross-References.*

Instructions, see post, § 116.

Pleading, see post, § 110.

Validity and sufficiency of title or claim in general, see ante, §§ 70-82.

Retroactive operation of statute, see post, § 87.

### § 86. Necessity in general.

### § 87. Statutory provisions.

### § 88. Act of ownership.

### § 89. Condition of acquiring title or right.

### § 90. Property assessed.

### § 91. Color of title.

### § 92. Persons making payment.

**§ 93. Duration and continuity of payment.**

**§ 94. Sufficiency of payment.**

**§ 95. Evidence.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**II. OPERATION AND EFFECT.**

**(A) EXTENT OF POSSESSION.**

*Cross-References.*

Evidence, see post, §§ 113, 114.

Instructions, see post, § 116.

Question for jury, see post, § 115.

**§ 95(a). Extent in general.**

*Cross-Reference.*

See 1 Cent. Dig. Adv. Poss. §§ 533-536.

**§ 96. Property in actual possession.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 97. Possession without claim of right or color of title.**

(a) In ejectment, defendants set up adverse possession by themselves and their ancestor, subsequent to a deed from him to plaintiff's deceased wife. It was not pretended that the ancestor had any paper title after making the deed. *Held*, that his possession through a tenant could not be extended beyond what the latter actually occupied.—*Hackett v. Webster*, 97 Md. 404, 55 Atl. 480. [*Cited and annotated* in 15 L. R. A. (N. S.) 1190, 1196, 1200, 1246, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

(b) One who holds land adversely, but without paper color of title, holds only that land which he has reduced to actual possession.—*Hackett v. Webster*, 97 Md. 404, 55 Atl. 480. [*Cited and annotated* in 15 L. R. A. (N. S.) 1190, 1196, 1200, 1246, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

(c) Where a person enters on land which he knows does not belong to him, with intent to make it his own by possession, and without compensation to one holding the legal title, he acquires title only to such part of the land as he actually incloses.

—*Hoye v. Swan*, 5 Md. 237. (For Md. statutory provision on necessity for inclosure in adverse possession, see Code, art. 75, § 79.) [*Cited and annotated* in 15 L. R. A. (N. S.) 1243, 1245, 1246, 1250, on necessity for color of title, not expressly made a condition by statute, in adverse possession; in 35 L. R. A. (N. S.) 762, on effect of conveyance of land held adversely.]

**§ 98. Possession under claim of right without color of title.**

**§ 99. Possession under color of title.**

*Cross-Reference.*

Evidence, see post, § 113.

*Annotation.*

Possession under color of title.—15 L. R. A. (N. S.) 1242, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 100.— Constructive possession in general.**

*Annotation.*

Use of possessory title as a weapon of offense.—46 L. R. A. (N. S.) 497, note.

(a) Though a deed to a religious society is void, an entry under it would constitute adverse possession to the extent of the boundaries contained in it, so as to perfect title in the religious society by continued possession for 20 years as against the grantor and his heirs.—*Trustees of Zion Church of City of Baltimore v. Hilken*, 84 Md. 170, 35 Atl. 9. [*Cited and annotated* in 27 L. R. A. (N. S.) 389, on adverse possession by religious society.]

(b) Where one enters into the possession of land, claiming title by deed, his possession by law will be deemed co-extensive with the boundaries stated in his deed.—*Hammond v. Ridgely*, 5 H. & J. 245, 9 Am. Dec. 522.

(c) A tract of land was granted to A. in 1694, and an adjoining tract was granted to B. in 1695. The latter entered upon a part of A.'s land, and occupied it, with inclosure, uninterruptedly and exclusively, for over 20 years. *Held*, that A., and those claiming under him, were barred by the statute of limitations.—*Hammond v. Ridgely*, 5 H. & J. 245, 9 Am. Dec. 522.

**§ 101.—Relation to each other of different premises or parts of same premises.**

*Cross-Reference.*

Inclosure, see ante, § 19.

**§ 102.—Sale or lease of part of property or subdivision thereof.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 103.—Mixed possession under hostile titles, or conflicting grants or surveys.**

(a) Where the plaintiff in ejectment, with title, has possession by inclosure and cultivation of a part of a tract of land, claiming the whole, and the defendant, without title, has possession by inclosure of a part of the same tract, with the use of the other parts not inclosed, the plaintiff is bound by the act of limitations as to that part of the land which is in possession of the defendant by actual inclosure for more than 20 years next preceding the bringing of his ejectment, but not as to parts used by the defendant exterior to the inclosure.—*Cheney v. Ringgold*, 2 H. & J. 87. (For Md. statutory provision on necessity of inclosure in adverse possession, see Code, art. 75, § 79.)

(b) The possession of part of a tract of land, with title to the whole, is the possession of the whole, except against an adverse possession by actual inclosure. (But see Code, art. 75, § 79).—*Gibson v. Martin*, 1 H. & J. 545.

**(B) TITLE OR RIGHT ACQUIRED.**

*Cross-References.*

Bar to dower, see "Dower," §§ 48, 61.

Bona fide purchaser from former owner, see "Vendor and Purchaser," § 239.

Defense in trespass, see "Trespass," § 27.

Defense to replevin, see "Replevin," § 12.

Right to crops, see "Crops," § 2.

Right to redeem from tax sale, see "Taxation," § 697.

Right to rescind exchange of property when title of property received rests on adverse possession, see "Exchange of Property," § 5.

Sufficiency of title to support action to quiet title, see "Quieting Title," § 10.

Sufficiency of title to support contract of sale, see "Vendor and Purchaser," §§ 130, 131.

Sufficiency of title to support replevin, see "Replevin," § 8.

Sufficiency of title to support trespass, see "Trespass," § 19.

**§ 104. Presumption of grant.**

*Cross-Reference.*

Question for jury, see post, § 115.

(a) Where one has had possession of land in such a way and for such time as to make the possession adverse, a deed is presumed, which presumption may exist, though the jury may disbelieve the actual execution of such a grant.—*Cadwalader v. Price*, 111 Md. 310, 73 Atl. 273.

(b) The presumption of title from possession arises only when the possession proved appears to have been perfectly consistent with an unqualified ownership. A grant will not be presumed when the possession is explained by evidence showing that it was taken in virtue of some qualified interest or estate less than that of an absolute title.—*Colvin v. Warford*, 20 Md. 357.

(c) Though a user of a way for 20 years, exercised adversely and without anything to qualify it, will afford sufficient ground for the presumption of a grant, yet if the enjoyment can be referred to the leave or favor of the party over whose lands the right of way is claimed, or can be placed on any other footing than a claim or assertion of right, it will repel the presumption of a grant.—*Pue v. Pue*, 4 Md. Ch. 386. [Cited and annotated in 8 L. R. A. (N. S.) 150, on burden of showing permissiveness of use on which prescriptive easement is claimed.]

(d) Twenty years' possession of land under a claim of title raises the presumption of a grant.—*Casey v. Inloes*, 1 Gill 430, 39 Am. Dec. 658.

(e) A grant will be presumed where there has been an actual, adverse, exclusive, and continuous possession, under a claim of title, for 20 years; and it is not necessary that the jury, in their consciences, should believe in the actual execution of any such grant.—*Casey v. Inloes*, 1 Gill 430, 39 Am. Dec. 658. [Cited and annotated in 18 L. R. A. 781, on what title or interest will support ejectment.]

(f) A partial possession of land with a general claim of title for 15 years, will not authorize the presumption of a conveyance to the claimant.—*Lee v. Hoye*, 1 Gill 188.

(g) Where a tract of land was granted to A. in 1694, and an adjoining tract granted to B. in 1695, and B. entered upon a part of A.'s land, and possessed, used, and occupied it by himself and those claiming under him for a period of 100 years, it will not be presumed that there was a conveyance from A. to B.—*Hammond v. Ridgely*, 5 H. & J. 245, 9 Am. Dec. 522.

(gg) Where a certificate of survey of land was made in 1720, and a grant thereon issued in 1724, after the death of the grantee, it was *held* that the jury might, and ought, to presume a grant to the devisees of the grantee, if possession of the land had been held under said title.—*Carroll v. Norwood*, 4 H. & McH. 287; *Same v. Norwood's Heirs*, 5 H. & J. 155.

(h) The lord proprietary of Maryland, by his agent, in 1742, leased to A., for 99 years, a tract of land called B. In 1747, the administrator of A., with the approbation of the agent, assigned the lease to C., who, by his will, in 1765, devised the land to his sons D. and E., to be equally divided between them. The sons, being in possession, conveyed their interest to F.—one of them in 1769, and the other in 1774; but the deeds were not recorded in the time prescribed by law. F. entered into possession under those deeds, and held until 1794, when he contracted for the sale of the land. *Held*, that the circumstances were sufficient for the jury to presume good and valid deeds from D. and E. to F. of said land.—*Bradford v. McComas*, 3 H. & J. 444.

(i) In 1748, a tract of land called C., was granted to A., who in 1756 conveyed a part of that tract, by courses and distances, to B. In 1857, A., being in possession of a tract of land called R., which was granted to D., in 1685, conveyed a part of that tract, by courses and distances, to E. Part of the land in the first deed was included in that part of the tract called R. which was conveyed to E. In an action of ejectment, brought for the tract called C., there was proof of 60 years' possession by E. and the defendant of the tract called R., for which defense was taken. *Held*, that the court might properly direct the jury that if they

were satisfied that the defendant and those under whom he claims held and claimed the land in dispute under A., from whom the conveyances were made in 1756 to B., and in 1757 to E., then there is competent legal proof to satisfy the jury that A., at the time of making the conveyance to B., had a good and sufficient legal title to the tracts of land called C. and R.; but there was no error in refusing to direct that if E. was in possession of that part of R. (for which the defendant took defense) under A. when a warrant to resurvey R. was granted to E. and one F., and located by them, and for which they obtained a grant in 1751, and that possession has been regularly transmitted from E. to the defendant, the jury ought to presume a deed for the land from A. to E. prior to the deed from A. to B.—*Dale v. Fassett*, 3 H. & J. 119.

(j) In 1748, a tract of land, called C., was granted to A., who in 1756 conveyed a part of that tract, by courses and distances, to B. In 1757, A., being in possession of a tract of land called R., which was granted to D. in 1685, conveyed a part of that tract, by courses and distances, to E. Part of the land in the first deed was included in that part of the tract called R., which was conveyed to E. In an action of ejectment, brought for the tract called C., there was proof of 60 years' possession and upward by A., B., and the lessor of the plaintiff, of the lands located by the plaintiff on the plots, and also proof of upward of 60 years' possession by E. and the defendant of the tract called R., for which defense was taken. *Held*, that if the jury are satisfied that the defendant and those under whom he claims held and claimed the land in dispute under A., from whom the conveyances were made, in 1756 to B., and in 1757 to E., then there is competent legal proof to satisfy the jury that A., at the time of making the conveyance to B., had a good and sufficient legal title to the tracts of land called C. and R., and that the jury may and ought to presume a deed or devise to A. for the same, or that he held the same by descent, from the person having the legal right and title thereto.—*Dale v. Fassett*, 3 H. & J. 119.



(jj) To lay the foundation for presuming a grant of land, it is necessary to show an incipient title from the proprietary, that is, an equitable interest, direct from the proprietary, by a located warrant and payment of the composition, or a certificate of survey under a common or other warrant, and payment of the composition, and length of possession consequent on such equitable interest in the person acquiring the same and those claiming under him.—*Mundell's Lessee v. Clerklee*, 3 H. & J. 462.

(k) From great length of possession of the land and the payment of taxes the jury may presume a conveyance.—*Cheney v. Watkins*, 1 H. & J. 527, 2 Am. Dec. 530. [*Cited and annotated in 38 L. R. A. (N. S.) 938, as to when instrument otherwise ineffective as a conveyance of real property may be upheld as a covenant to stand seised to uses.*]

#### § 105. Rights and liabilities of occupants.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 106. Nature and extent of title or right.

(a) Where the trustees of a church building had been in the open, notorious and undisputed possession of the lot on which it stood for a period of more than 60 years, a title had become vested in them, perfect as against all persons not under legal disabilities.—*Mills v. Trustees of Zion Chapel in Cambridge*, 119 Md. 510, 87 Atl. 257.

(b) By adverse possession for the statutory period, the adverse holder acquires a title in fee simple, its legal effect being not only to bar the remedy of the owner of the paper title, but to divest his estate, and vest it in the adverse holder.—*Safe Deposit & Trust Co. of Baltimore v. Marburg*, 110 Md. 410, 72 Atl. 839. [*Cited and annotated in 38 L. R. A. (N. S.) 27, on what is marketable title.*]

(c) Where a mortgagor and his predecessors in title had been in adverse and exclusive possession of the mortgaged land for more than 45 years, an outstanding leasehold interest in a part of the land

was barred.—*Cook v. Councilman*, 109 Md. 622, 72 Atl. 404.

(d) Where a tenant in tail is barred by limitations, her issue will be barred, and the adverse possessor or those claiming under her are invested with an indefeasible title and right to possession of the land, which they can defend against any attempt of the tenant in tail or her issue to dispossess them through legal procedure and can also enforce and reclaim by ejectment against the paper title holder in case of ouster by him.—*Wickes v. Wickes*, 98 Md 307, 56 Atl. 1017; *Stevens v. Wickes*, *Ibid*; *Wickes v. Stevens*, *Ibid*.

(e) A title acquired by adverse possession under color of title is good, even though there be serious defects in the paper title.—*Erdman v. Corse*, 87 Md. 506, 40 Atl. 107. [*Cited and annotated in 15 L. R. A. (N. S.) 1215, on necessity for color of title, not expressly made a condition by statute, in adverse possession; in 38 L. R. A. (N. S.) 27, 36, on what is a marketable title.*]

(f) By force of the limitation statute possession for 20 years is like a descent at common law, and tolls the entry of the person having right; and, though the very right be in defendant, yet he cannot justify his ejecting the plaintiff.—*Armstrong v. Risteau*, 5 Md. 256, 59 Am. Dec. 115. [*Cited and annotated in 15 L. R. A. (N. S.) 1190, 1192, 1245, 1257, on necessity for color of title, not expressly made a condition by statute, in adverse possession.*]

(g) Where a party and those under whom he claims have held, for nearly a century, uninterrupted and unmixt possession of lands, the title founded on this possession is impregnable against any title which the state can grant, as is conclusively shown by Acts 1818, c. 90, and Acts 1849, c. 424 (see Code, art. 54).—*Chapman v. Hoskins*, 2 Md. Ch. 485.

(h) Where the plaintiff's right of entry is barred by the statute of limitations, there can be no recovery.—*Harbaugh v. Moore*, 11 G. & J. 283.

(i) Where the proprietary of Maryland was barred of his right to escheat lands by the statute of limitations, his lease of such

lands was *held* inoperative to pass the same.  
—*Russell v. Baker*, 1 H. & J. 71

### § 107. Amount of land.

*Cross-Reference.*

Pleading, see post, § 110.

### § 108. Establishment of boundaries.

*Cross-References.*

Evidence, see post, § 114.

Hostile character of possession, see ante, § 66.

Question for jury, see post, § 115.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 109. Abandonment or forfeiture of title after acquisition.

*Cross-Reference.*

Burden of proof, see post, § 112.

(a) Where defendant's predecessors disclaimed all title to a portion of the property in controversy in the return of their property for taxation under oath, such disclaimer operated as a waiver of any claim to such property by adverse possession as against the city.—*Baltimore City v. Rowe*, 107 Md. 704 (memorandum report), 67 Atl. 93 (full report); *Rowe v. Baltimore City*, *Ibid*.

## III. PLEADING, EVIDENCE, TRIAL, AND REVIEW.

*Cross-References.*

Evidence as to particular elements of adverse possession, see ante, §§ 27, 33, 38, 57, 85, 95.

Pleading limitations, see "Limitation of Actions," §§ 180, 182, 183.

Review as dependent on presentation of question in lower court, see "Appeal and Error," §§ 172, 173.

Right of action for slander of title of land held adversely, see "Libel and Slander," § 139.

### § 110. Pleading possession.

### § 111. Pleading title or right.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 112. Presumptions and burden of proof.

*Cross-References.*

See "Ejectment," § 95; "Trespass," § 44. Instructions, see post, § 116.

(a) Where two persons are in mixed possession of the same land, one by title and the other by wrong, the law considers the one who has the title as in possession to the

extent of his right, so as to preclude the other from taking advantage of the statute of limitations.—*Cheney v. Ringgold*, 2 H. & J. 87.

### § 113. Admissibility of evidence.

*Cross-References.*

Particular elements of adverse possession, see ante, §§ 27, 33, 38, 57, 85, 95. Opinion evidence, see "Evidence," § 471.

(a) In ejectment, where defendants set up adverse possession, a witness testified that he rented a "two-horse till" of the lands; that the balance, a one-horse till, was rented to another tenant; that the lands consisted of "about 80 to 90 acres of arable land, the balance, some 30 acres, being timber land"; that by universal neighborhood custom firewood went with a rented farm, and that, though nothing was said about timber land at the time of renting, he went indiscriminately over the woodland, while a tenant, and cut cordwood for the use of his family and fencing; that he knew nothing about the other tenant's lease; that he saw him hauling corn to defendants' ancestor, which he supposed to be rent; and that, on leaving the lands rented by him, one of the defendants moved on the same. *Held*, that such testimony was inadmissible, as there were no plats or locations to point out the part of the lands claimed to have been occupied.—*Hackett v. Webster*, 97 Md. 404, 55 Atl. 480. [*Cited and annotated* in 15 L. R. A. (N. S.) 1190, 1196, 1200, 1246, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

(b) Where adverse possession is attempted to be established by proof of possession of different parts of the land in controversy by different tenants, plats and locations can alone furnish the jury any certain evidence on which they can form a verdict as to what was actually occupied.—*Hackett v. Webster*, 97 Md. 404, 55 Atl. 480. [*Cited and annotated* in 15 L. R. A. (N. S.) 1190, 1196, 1200, 1246, on necessity for color of title, not expressly made a condition by statute, in adverse possession.]

(c) Where adverse possession by defendants and their ancestor was attempted to be established by proof of possession of different parts of the land in controversy by dif-

ferent tenants, and there were no plats or locations showing just what land was actually occupied, deeds for a portion of the tract made by the ancestor were inadmissible to prove such adverse claim.—*Hackett v. Webster*, 97 Md. 404, 55 Atl. 480. [*Cited and annotated in 15 L. R. A. (N. S.) 1190, 1196, 1200, 1246, on necessity for color of title, not expressly made a condition by statute, in adverse possession.*]

(d) A lessee for the term of 99 years, renewable forever, died, and S. entered upon the premises as a trespasser or disseisor. Before his possession had ripened into a perfect title by the lapse of 20 years, he voluntarily administered upon the estate of the lessee, and assigned and took a reassignment to himself of the lease, by deeds which he placed upon record, and in which the title of the lessor was carefully recited and recognized. S. died, leaving a will, by which he gave all his estate to his wife, with remainder in specific portions to his children. After his death, letters testamentary were granted to his wife as executrix under the will. In an action of ejectment brought by the grantee of the reversion against the parties in possession, claiming under S., *held* that the inventory of the estate of S., or the fact that S. returned no inventory of the estate of the original lessee, upon which he administered, was irrelevant.—*Campbell v. Shipley*, 41 Md. 81. [*Cited and annotated in 53 L. R. A. 946, 950, 951, 952, on tenant's right to acquire title not inconsistent with landlord's when tenancy commenced.*]

(e) The declarations of one under whom plaintiff claims title by adverse possession are admissible to show the character of such possession.—*Keener v. Kauffman*, 16 Md. 296.

(f) On an issue as to adverse possession, a witness sworn on the survey may give evidence of the general possession of the land located on the plats, and of any acts of ownership generally over the same, without any particular location of the place where the acts of ownership were performed.—*Armstrong v. Risteau*, 5 Md. 256, 59 Am. Dec. 115. [*Cited and annotated in 15 L. R. A. (N. S.) 1190, 1192, 1245, 1257, on necessity*

for color of title, not expressly made a condition by statute, in adverse possession.]

(g) Evidence of a prevalent opinion in the neighborhood that certain premises belonged to the state or city is inadmissible, as such fact could not prevent the acquisition of title thereto by disseisin.—*Casey v. Inloes*, 1 Gill 430, 39 Am. Dec. 658. [*Cited and annotated in 18 L. R. A. 781, on what title or interest will support ejectment.*]

(h) If the defendants in an action of ejectment have not located their adverse possession of the plots, no evidence can be given of them.—*Carroll v. Norwood*, 1 H. & J. 167.

#### § 114. Weight and sufficiency of evidence.

##### *Cross-Reference.*

Instructions, see post, § 116.

(a) That a vendor measured a boundary line of the tract sold showed not only what land the purchaser purchased, but also that the vendor knew of the character and extent of the purchaser's subsequent possession.—*Jacobs v. Disharoon*, 113 Md. 92, 77 Atl. 258.

(b) In an action of ejectment brought to recover the possession of land which had formerly been the bed of an old road, the evidence showed that the road had been closed up by the county commissioners 28 years prior to the institution of the suit; that thereupon the defendants, at their own expense, opened an avenue over the road, and, by changing the grade and digging away the soil, made the road impassable; that shortly after, believing, as owners of the adjoining lots, they were entitled to the roadbed, they fenced it in with their lots, and rented them out for pasture, and received the rent since that time; that they paid the taxes on the property from the time of taking possession, 1861, until 1886. *Held* sufficient to justify the court, sitting as a jury, to find that defendants had an actual, hostile, notorious, and exclusive possession of the premises for 20 years.—*Sadtler v. Peabody Heights Co.*, 66 Md. 1, 10 Atl. 599. [*Cited and annotated in 15 L. R. A. (N. S.) 1185, 1190, 1196, 1201, 1207, 1208, on necessity for color of title, not expressly made a condition by statute, in adverse possession.*]

**§ 115. Questions for jury.**

(a) Where one claims title to lands by adverse possession, the question whether such possession is, in fact, adverse, is for the determination of the jury.—*Keener v. Kauffman*, 16 Md. 296.

(b) The possession must be actual, adverse, exclusive, and continuous, and under claim of title, to authorize the presumption of a deed, and if a prayer does not leave the finding of these facts to the jury it is erroneous.—*Armstrong v. Ristean*, 5 Md: 256, 59 Am. Dec. 115. [*Cited and annotated in 15 L. R. A. (N. S.) 1190, 1192, 1245, 1257, on necessity for color of title, not expressly made a condition by statute, in adverse possession.*]

(c) In those cases where the bar of the act of limitations depends upon knowledge in the plaintiff of the defendant's adverse claim and possession, the fact of such knowledge is to be found by a jury; and, though the plaintiff has admitted such knowledge, the court are not authorized to say to the jury, if they so find, that the statute is a bar.—*Abell v. Harris*, 11 G. & J. 367. [*Cited and annotated in 15 L. R. A. (N. S.) 1213, on necessity for color of title, not expressly made a condition by statute, in adverse possession.*]

**§ 116. Instructions.****§ 117. Verdict and findings.****Cross-References.**

Conformity of findings of court to facts and evidence, see "Trial," § 396.

Construction of findings on issue of limitations, see "Limitation of Actions," § 201.

Failure of court to find as to limitations, see "Trial," § 397.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**ADVERSE USER.****Cross-References.**

See "Dedication," § 20; "Easements," §§ 4-11; "Highways," §§ 7-10; "Waters and Water Courses," § 138.

**Annotation.**

1 Words and Phrases, 236.

**ADVERTISEMENT.****Cross-References.**

Contracts for advertising, see "Contracts," § 204.

In official newspapers, see "Newspapers." Licenses to use walls or boardings for bill posting, see "Licenses," §§ 44, 50, 58, 62. License tax on persons engaged in advertising, see "Licenses," § 11.

Of lotteries, see "Lotteries," § 22.

Of sale of land mortgaged to secure school-fund loan, see "Schools and School Districts," § 18.

Of sale of municipal bonds, see "Municipal Corporations," § 921.

Power of city to regulate billboards and other devices for advertising purposes, see "Municipal Corporations," § 602.

Prohibiting use of United States flag, as special legislation, see "Statutes," § 86.

Proposals for contracts, see "Contracts," § 17; "Counties," § 117; "Drains," § 49; "Municipal Corporations," §§ 237, 331; "Schools and School Districts," § 80; "States," § 98; "United States," § 64.

Publication of process, see "Process," §§ 84-111.

**Annotation.**

1 Words and Phrases, 236, 237.

**ADVICE OF COUNSEL.****Cross-References.**

Affecting forfeiture of legacy for contest of will, see "Wills," § 667.

Affecting validity of will, see "Wills," § 85.

Defense to action for penalty for making false list of taxable property, see "Taxation," § 839.

Defense to civil action, see "False Imprisonment," § 14; "Malicious Prosecution," § 21; "Trespass," § 23.

Defense to contempt proceedings, see "Contempt," §§ 28, 29.

Defense to criminal prosecution, see "Bribery," § 10; "Criminal Law," § 32; "Fences," § 28; "Larceny," § 78; "Perjury," § 15.

Defense to proceedings for violation of injunction, see "Injunction," § 227.

Defense to prosecution for obstruction of highway, see "Highways," § 163.

Evidence of probable cause for prosecution, see "Malicious Prosecution," § 25.

Excuse for delay affecting *lis pendens*, see "Lis Pendens," § 10.

Justification for libel, see "Libel and Slander," § 56.

Mitigating damages for trespass, see "Trespass," § 55.

**ADVISING ACQUITTAL.****Cross-Reference.**

See "Criminal Law," § 753.

**ADVISORY OPINIONS.****Cross-Reference.**

Of courts or judges, jurisdiction of appellate courts, see "Courts," § 208.

**ADVOCATE.***Cross-Reference.*

See "Attorney and Client."

**AEROLITE.***Cross-Reference.*

Nature as property, see "Property," § 4.

*Annotation.*

1 Words and Phrases, 238.

**AFFECTION.***Cross-References.*

Alienation of affections of husband or wife, see "Husband and Wife," §§ 322-337.

Consideration for contract, see "Contracts," § 77.

Consideration for conveyance, see "Deeds," § 17; "Fraudulent Conveyances," § 93.

**AFFIDAVITS.***Scope-Note.*

[INCLUDES formal declarations or statements in writing and under oath, as to matters of fact, whether made voluntarily or not, taken ex parte for use in legal proceedings; making, taking, and requisites of such affidavits; amendment of defects; and use in evidence in general.

[EXCLUDES competency of evidence in general (see "Evidence"), and competency of witnesses (see "Witnesses"); depositions taken on interrogatories subject to cross-examination (see "Depositions"); affidavits of claim, of merits, or of defense (see "Pleading"); and affidavits for purposes incident to particular proceedings in actions or other legal proceedings (see "Arrest"; "Attachment"; "Habeas Corpus"; and other specific heads). For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Nature and functions in general.
- § 2. Persons who may make.
- § 3. Knowledge or information of affiant.
- § 4. Compelling making of affidavit.
- § 5. Authority to take.
- § 6. Mode of taking.
- § 7. Entitling.
- § 8. Venue.
- § 9. Form and contents.
- § 10. Date.
- § 11. Signature and oath.
- § 12. Jurat or certificate of officer.
- § 13. Affidavit taken in other state or foreign country.
- § 14. — Authority of officer and mode of taking.
- § 15. — Authentication.
- § 16. Amendment.
- § 17. Sufficiency and effect of averments.
- § 18. Use in evidence.

*Cross-References.*

See "Depositions"; "Oath."

As hearsay evidence, see "Evidence," § 318.

As judicial admissions, see "Evidence," § 210.

Best and secondary evidence in prosecution for making false affidavit, see "Criminal Law," § 400.

Effect of affidavit of forgery on burden of proving execution of deed in trespass to

try title, see "Trespass to Try Title," § 38.

Estoppel by recitals in affidavits, see "Estoppel," § 4.

False affidavit, see "Perjury."

Forgery, see "Forgery," § 7.

Items of costs, see "Costs," § 154.

Parol evidence as to contents, see "Criminal Law," § 447.

Part of record on appeal, see "Criminal Law," §§ 1088, 1090.  
 Privileged communications, see "Libel and Slander," § 38.  
 Record for purpose of review, see "Appeal and Error," § 523.  
 Review of decisions, see "Appeal and Error," §§ 104, 683.  
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*Particular proceedings or purposes.*

See "Arrest," §§ 22-32; "Attachment," §§ 77-127, 246, 247, 249, 296; "Discovery," §§ 55, 97; "Dismissal and Nonsuit," §§ 71, 81; "Ejectment," §§ 15, 77; "Extradition," § 32; "Garnishment," §§ 86-88; "Injunction," §§ 145-147; "Mandamus," § 155; "Motions," §§ 26-31; "Ne Exeat," § 7; "Prohibition," § 21; "Records," § 17; "Removal of Causes," § 87; "Replevin," §§ 27-32.  
 Accompanying bid for construction of municipal improvements, see "Municipal Corporations," § 332.  
 Accompanying conditional sale, see "Sales," § 463.  
 Accompanying documents to authorize admission in evidence, see "Criminal Law," § 444.  
 Accompanying mortgages, see "Chattel Mortgages," § 63; "Corporations," § 477.  
 Accompanying pleadings, see "Corporations," § 517; "Divorce," § 106; "Equity," § 320.  
 Accompanying transcript of record for purpose of review, see "Appeal and Error," § 542.  
 Account of executor, see "Executors and Administrators," § 502.  
 Additional proofs in appellate court, see "Appeal and Error," § 891.  
 Allowance of appeal or writ of error, see "Appeal and Error," § 361; "Criminal Law," § 1074; "Justices of the Peace," § 157.  
 Amendment of court records in general, see "Courts," § 116.  
 Amendment of judgment record, see "Criminal Law," § 996.  
 Amendment or correction of judgment, see "Judgment," § 324.  
 Appeal in criminal cases, see "Criminal Law," §§ 260, 1077, 1131.  
 Application for authority to practice medicine or surgery, see "Physicians and Surgeons," § 5.  
 Application for bill of particulars, see "Pleading," § 323.  
 Application for franchise to operate ferry, see "Ferries," § 14.  
 Application for leave to amend pleading, see "Pleading," § 238.  
 Application for order for substituted service of process, see "Process," § 74.  
 Application for rehearing, see "Equity," § 392.  
 Application for relief of pauper, see "Paupers," § 41.  
 Application for temporary alimony, see "Divorce," § 214.

Application for writ of assistance to put purchaser at foreclosure sale in possession, see "Mortgages," § 544.  
 Appointment of receiver, see "Receivers," §§ 37, 38.  
 Arrest of judgment, see "Criminal Law," § 974.  
 Assistance of voter in preparation of ballot, see "Elections," § 220.  
 Attachment in proceeding to collect rent, see "Landlord and Tenant," § 229.  
 Attachment to enforce lien on logs, lumber, mills, or mill products, see "Logs and Logging," § 33.  
 Bastardy proceedings, see "Bastards," § 40.  
 Certiorari to review judgment of justice of the peace, see "Justices of the Peace," § 202.  
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 Charging bribery, see "Bribery," § 4.  
 Claim against bankrupt's estate, see "Bankruptcy," §§ 330-336.  
 Claim of exemption, see "Exemptions," § 122.  
 Claim to property taken on execution, see "Execution," § 184.  
 Compelling attendance of witnesses, see "Witnesses," § 9.  
 Confession of judgment, see "Judgment," § 51.  
 Contempt proceedings, see "Contempt," §§ 54, 58; "Injunction," § 230.  
 Continuance, see "Continuance," §§ 44-47; "Criminal Law," §§ 574, 589, 590, 591, 603-611.  
 Contradiction of judgment record, see "Criminal Law," § 995.  
 Disbarment, see "Attorney and Client," § 52.  
 Discovery of assets of decedent's estate, see "Executors and Administrators," § 85.  
 Dismissal of appeal or writ of error, see "Appeal and Error," § 799.  
 Distress, see "Landlord and Tenant," §§ 262, 270.  
 Enforcement of lien for services, see "Master and Servant," § 82.  
 Evidence in criminal prosecutions, see "Criminal Law," §§ 383, 547.  
 Evidence of domicile, see "Domicile," § 10.  
 For arrest of convict breaching labor contract, see "Convicts," § 9.  
 For attachment by or against corporation, see "Corporations," §§ 509, 670.  
 For attachment in justice court, see "Justices of the Peace," § 86.  
 Forcible entry and detainer brought by landlord against tenant, see "Landlord and Tenant," § 291.  
 For commitment of insane person, see "Insane Persons," § 49.  
 For default judgment, see "Judgment," §§ 125, 126.  
 For publication of process, see "Process," § 96.  
 For search warrant, see "Searches and Seizures," § 3.  
 In garnishment proceedings in justices' courts, see "Justices of the Peace," § 87.

Impeachment or contradiction of record, see "Appeal and Error," § 670.

In forma pauperis on appeal or other proceeding for review, see "Appeal and Error," § 389; "Criminal Law," § 1077.

Intervention, see "Parties," § 44.

Location of mining claims, see "Mines and Minerals," § 21.

Loss of instrument sued on, see "Lost Instruments," § 17.

Motion to strike pleadings, see "Pleading," § 360.

Negating collusion in interpleader proceedings, see "Interpleader," § 25.

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Of claim or cause of action, see "Justices of the Peace," § 91; "Pleading," § 75.

Of defense or of merits, see "Pleading," §§ 151-161; "Sales," § 354.

Of disqualification of judge, see "Judges," § 51.

Of forgery before disproving execution of deed in trespass to try title, see "Trespass to Try Title," § 35.

Of illegality of execution, see "Execution," §§ 165-168.

Of inability to pay jury fees, see "Jury," § 26.

Of jurors to sustain or impeach verdict, see "Trial," § 344.

Of merits and good faith on appeal or writ of error, see "Appeal and Error," § 367.

Of nonresidence as prerequisite to order for appearance, see "Equity," § 119.

Of payment of capital of limited partnership, see "Partnership," § 356.

Of publication, see "Equity," § 119; "Ferryes," § 14; "Municipal Corporations," § 294; "Newspapers," §§ 1, 6; "Process," § 138.

Of qualifications of newspaper desiring to publish legal notices, see "Newspapers," § 1.

Of service of notice of proceedings to alter highway, see "Highways," § 72.

Of service of notice of proceedings to establish highway, see "Highways," § 30.

Of service of process, see "Process," § 137.

Opening or vacating judgment, see "Judgment," §§ 158-160, 162, 384, 390-392.

Performance of work on mining claim, see "Mines and Minerals," § 23.

Placing cause on short cause calendar, see "Trial," § 12.

Precept for enforcement of municipal assessment, see "Municipal Corporations," § 532.

Preliminary affidavit in criminal prosecution, see "Criminal Law," §§ 209-214; "Indictment and Information," § 9.

Procuring license, see "Intoxicating Liquors," § 64.

Proof of service or publication of notice of public improvements, see "Municipal Corporations," § 294.

Proof on appeal, see "Appeal and Error," § 1139.

Prosecution for violation of liquor laws, see "Intoxicating Liquors," § 198.

Prosecution for violation of municipal ordinance, see "Municipal Corporations," § 639.

Publication in official newspaper, see "Newspapers," § 6.

Quashing venire of jurors, see "Jury," § 120.

Reinstatement of appeal, see "Criminal Law," § 1131.

Renewal of filing or record of mortgage, see "Chattel Mortgages," § 98.

Revocation of license, see "Intoxicating Liquors," § 108.

Scire facias to revive judgment, see "Judgment," § 870.

Securing preference of cause on calendar, see "Trial," § 13.

Security for costs, see "Costs," § 115.

Service of notice to redeem from tax sale, see "Taxation," § 707.

Special assessments, see "Municipal Corporations," § 483.

Substitutes for bills of exception, see "Criminal Law," § 1090.

Summary judgment, see "Judgment," § 185.

Summary proceedings by landlord to recover possession of demised premises, see "Landlord and Tenant," §§ 303, 305.

Summary proceedings for removal of tenant, see "Landlord and Tenant," § 303.

Summary prosecutions, see "Criminal Law," § 252.

Supplementary proceedings, see "Execution," §§ 377, 379, 383, 387.

Taking depositions, see "Depositions," § 36.

Taxation of costs, see "Costs," §§ 205-207.

To amend or correct judgment, see "Judgment," § 335.

To authorize service of process by publication, see "Justices of the Peace," § 81.

To confirm sale on mortgage foreclosure, see "Mortgages," § 526.

To enforce lien on logs, lumber, mills, or mill products, see "Logs and Logging," § 33.

To foreclose agricultural lien, see "Agriculture," § 15.

To obtain leave to sue or defend in forma pauperis, see "Costs," § 132.

To obtain sequestration, see "Sequestration," § 12.

To supply omissions in record, see "Appeal and Error," § 715.

To support claim for fees of referee, see "Reference," § 76.

To sustain proceeding for inquisition of lunacy after conviction, see "Criminal Law," § 981.

To vacate order dismissing appeal, see "Appeal and Error," § 802.

Vacating or dissolving injunction, see "Injunction," §§ 173, 174.

Verification of account, see "Account, Action on," § 11.

Verification of affidavit amended on appeal, see "Criminal Law," § 1138.

Verification of amendment of return to writ of habeas corpus, see "Habeas Corpus," § 80.

Verification of assessment of highway taxes, see "Highways," § 127.

Verification of assessment rolls, see "Taxation," § 433.  
 Verification of bill of costs, see "Costs," § 205.  
 Verification of claim against county, see "Counties," § 202.  
 Verification of claim against estate assigned for benefit of creditors, see "Assignments for Benefit of Creditors," § 302.  
 Verification of claim against estate of decedent, see "Executors and Administrators," § 227.  
 Verification of claim against municipal corporation, see "Municipal Corporations," § 1007.  
 Verification of claim or statement of mechanic's lien, see "Mechanics' Liens," § 154.  
 Verification of complaint, see "Indictment and Information," § 41.  
 Verification of delinquent tax list, see "Taxation," § 628.  
 Verification of information, see "Indictment and Information," § 52.

Verification of motion for new trial, see "Criminal Law," § 949.  
 Verification of petition for certificate of probable cause, see "Criminal Law," § 1073.  
 Verification of petition in involuntary bankruptcy proceedings, see "Bankruptcy," § 82.  
 Verification of pleading, see "Bills and Notes," § 485; "Divorce," § 105; "Equity," §§ 313-319; "Injunction," § 122; "Justices of the Peace," § 97; "Pleading," §§ 290-294, 296-299, 301-304.  
 Verification of plea in abatement, see "Criminal Law," § 280.  
 Verification of schedule of debts of assignor for benefit of creditors, see "Assignments for Benefit of Creditors," § 79.  
 Verification of statement or agreed case, see "Submission of Controversy," § 9.  
 Writ of error coram nobis, see "Criminal Law," § 997; "Judgment," § 334.

## § 1. Nature and functions in general.

## § 2. Persons who may make.

### Cross-References.

Affidavits for arrest, see "Arrest," § 23.  
 Affidavits for attachment, see "Attachment," §§ 87, 88.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 3. Knowledge or information of affiant.

### Cross-References.

Affidavits for arrest, see "Arrest," § 27.  
 Affidavits for attachment, see "Attachment," §§ 97-100.  
 Sufficiency, on application to vacate judgment, of affidavit on information and belief, see "Judgment," § 390.

## § 4. Compelling making of affidavit.

### Cross-Reference.

For use on motion, see "Motions," § 28.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 5. Authority to take.

### Cross-References.

Affidavits taken in other state or foreign country, see post, § 14.  
 Affidavits for attachment, see "Attachment," § 90.

### Annotation.

Power of consul to take affidavits.—45 L. R. A. 499.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 6. Mode of taking.

## § 7. Entitling.

## § 8. Venue.

## § 9. Form and contents.

## § 10. Date.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 11. Signature and oath.

(a) In the absence of proof to the contrary, it will be presumed that the officer before whom an affidavit was made was satisfied that the party had such scruples as to entitle him to affirm, instead of taking an oath in the usual form. The certificate need not state that the party affirming "was conscientiously scrupulous as to taking an oath."—Loney v. Bailey, 43 Md. 10.

## § 12. Jurat or certificate of officer.

### Cross-References.

To verification of mechanic's lien claim or statement, see "Mechanics' Liens," § 154.

Verification of information, see "Indictment and Information," § 52.

(a) A paper purporting to be an affidavit made in a judicial proceeding of some kind, but not authenticated by the seal of the court, nor in any way showing the official character of the person before whom it was made, is not admissible in evidence.—Bartlett v. Wilbur, 53 Md. 485.

(b) When the affidavits by mortgagees that the debt secured is bona fide and justly due is made at the same time the acknowledgment was taken, and before H., who had



taken the acknowledgment as a commissioner of deeds, the fact that H. designated himself in his signature to the affidavits as a justice of the peace, by affixing the letters "J. P." to his name, instead of describing himself as commissioner of deeds, did not invalidate the affidavit.—*Stanhope v. Dodge*, 52 Md. 483.

(c) Where an affidavit was made before a notary public of the District of Columbia, and there is no proof of the statutory qualifications of such a notary to administer an oath, the presumption is that he has the same power that similar officers in the state have.—*Conolly v. Riley*, 25 Md. 402. [Cited and annotated in 21 L. R. A. 470, on presumption as to law of other states.]

**§ 13. Affidavit taken in other state or foreign country.**

**§ 14.— Authority of officer and mode of taking.**

*Cross-Reference.*

See ante, § 12.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 15.— Authentication.**

(a) It is not sufficient that the certification of a foreign affidavit show that the officer before whom the affidavit was sworn to was a judge of a particular court, even though such officer described himself in his attestation as a judge of a particular court, "being a court of record"; it is indispensable that the court be described in the certificate of the clerk as a court of record.—*Coward v. Dillinger*, 56 Md. 59.

(b) Under a statute providing that, if an affidavit is made out of the state, before a judge of a court of record, the clerk of said court shall certify "that at the time it was made he was an officer of said court," and "that the same is a court of record," the clerk of the court in which the affidavit was taken must certify, under the seal of the court, that such court is a court of record. The seal of the court is not, of itself, sufficient to establish that fact.—*Eveason v. Selby*, 32 Md. 340.

(c) An authentication called for by a tribunal here (as a verification to a pleading) is a part of the judicial proceedings of

this state, and is not such a judicial proceeding of another state as comes within the provision of the federal constitution and statutes respecting the manner in which such proceedings shall be proved.—*Gibson v. Tilton*, 1 Bland 352, 17 Am. Dec. 306.

**§ 16. Amendment.**

**§ 17. Sufficiency and effect of averments.**

*Cross-Reference.*

Knowledge or information of affidavit, see ante, § 3.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 18. Use in evidence.**

*Cross-References.*

Admissibility as judicial admissions, see "Evidence," § 210.

Hearsay evidence, see "Evidence," § 318.

In equity in general, see "Equity," § 347.

In proceedings before master, see "Equity," § 404.

Self-serving declarations, see "Evidence," § 271.

To prove domicile, see "Domicile."

(a) A voluntary affidavit ranks in equal grade with hearsay testimony, and in no case is received where better testimony can, from the nature of the case, be had.—*Patterson v. Maryland Ins. Co.*, 3 H. & J. 71, 5 Am. Dec. 419.

**AFFILIATION.**

*Cross-Reference.*

See "Bastards," §§ 19-94.

**AFFINITY.**

*Cross-References.*

Affecting capacity to marry, see "Marriage," § 10.

Element of incest, see "Incest," § 5.

Right of inheritance, see "Descent and Distribution," §§ 20-22.

*Annotation.*

1 Words and Phrases, 245-247.

**AFFIRMANCE.**

*Cross-References.*

Of conveyance by insane person, see "Insane Persons," § 66.

Of judgment or order in civil actions, see

"Appeal and Error," §§ 1124-1145;

"Certiorari," §§ 69, 70; "Justices of the Peace," § 189.

Of judgment or order in criminal prosecution, see "Criminal Law," § 1182.

*Annotation.*

1 Words and Phrases, 247, 248.

**AFFIRMATION.***Cross-References.*

- See "Oath," § 4.  
 Of appraisers of property taken under execution, see "Execution," § 141.  
 Of trial jurors, see "Jury," § 131.  
 Of witnesses, see "Witnesses," § 227.

*Annotation.*

- 1 Words and Phrases, 248.

**AFFIRMATIVE.***Cross-References.*

- Allegations in pleading, see "Pleading," §§ 1-186.  
 Defenses in pleading, see "Pleading," §§ 130-137.  
 Of issues, see "Trial," § 25.

**AFFIRMATIVE RELIEF.***Cross-References.*

- To defendant, see "Cancellation of Instruments," § 59; "Ejectment," § 116.

*Annotation.*

- 1 Words and Phrases, 248.

**AFFIXING.***Cross-References.*

- Personalty to realty, see "Fixtures."  
 Revenue stamps, see "Chattel Mortgages," § 62; "Deeds," § 48; "Internal Revenue," §§ 31-35; "Mortgages," § 60.  
 Seals, see "Seals," § 3.

*Annotation.*

- 1 Words and Phrases, 249.

**AFFRAY.***Scope-Note.*

[INCLUDES fighting in a public place, by agreement or otherwise, to the disturbance of the public peace, and aiding therein; nature and extent of criminal responsibility therefor, and grounds of defense; and prosecution and punishment of such acts as public offenses.

[EXCLUDES assaults and homicides committed in affrays (see "Assault and Battery"; "Homicide"); and riotous disturbances (see "Riot"). For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Nature and elements of offenses.
- § 2. Defenses.
- § 3. Persons liable.
- § 4. Indictment or information.
- § 5. Evidence.
- § 6. Trial and review.

*Cross-References.*

Conflicting regulations by state and municipality, see "Municipal Corporations," § 592.  
 Former jeopardy, see "Criminal Law," §§ 203, 292.

Homicide committed in affray, see "Homicide," §§ 64, 234.  
 Homicide committed in suppression of affray, see "Homicide," § 106.  
 Riotous disturbances, see "Riot."

**NOTE.**

No Maryland cases touching this subject are to be found in the Maryland Reports. Nevertheless, the titles and sub-titles are given as they appear in the American Digest Key Number classification, so that the investigator may at one time accomplish the double purpose of learning whether a given point has been passed upon by the Maryland Courts and also ascertain the particular place in the American Digest System where all state and federal cases upon the point will be found collected.

- § 1. Nature and elements of offenses.
- § 2. Defenses.

- § 3. Persons liable.
- § 4. Indictment or information.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

**§ 5. Evidence.***Cross-Reference.*

Res gestae, see "Criminal Law," § 364.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

*Annotation.*

Admissibility as res gestae of statements or exclamations of nonparticipant.—20 L. R. A. (N. S.) 133; 33 L. R. A. (N. S.) 109, notes.

**§ 6. Trial and review.***Cross-Reference.*

See ante, § 5.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**AFFREIGHTMENT.***Cross-References.*

Admiralty jurisdiction, see "Admiralty," § 12.

Contracts, see "Carriers," §§ 46-69; "Shipping," §§ 106, 108, 109, 140-142.

*Annotation.*

1 Words and Phrases, 251.

**AFRICAN.***Cross-References.*

Persons of African race or descent, see "Civil Rights"; "Constitutional Law," §§ 214-223; "Slaves."

**AFTER-ACQUIRED PROPERTY.***Cross-References.*

As property subject to lien for taxes, see "Taxation," § 507.

Construction and operation of conveyances, see "Deeds," § 116.

Construction and operation of marriage settlement, see "Husband and Wife," § 31.

Construction and operation of mortgages, see "Chattel Mortgages," § 124; "Mortgages," § 131; "Railroads," § 167; "Street Railroads," § 54.

Description in will, see "Wills," § 578.

Lien of judgment on, see "Judgment," § 782.

Operation of will upon, see "Wills," § 482.

Subject of contract of sale, see "Sales," § 14.

Subject of mortgage, see "Chattel Mortgages," § 18; "Mortgages," § 13.

Subject of testamentary disposition, see "Wills," § 8.

Subject to lien, see "Liens," § 11.

Title of assignee for creditors to property of assignors acquired after assignment, see "Assignments for Benefit of Creditors," § 183.

Title of trustee in bankruptcy to property of bankrupt acquired after adjudication, see "Bankruptcy," § 148.

*Annotation.*

1 Words and Phrases, 257.

**AFTER-ACQUIRED TITLE.***Cross-References.*

Estoppel to assert, see "Estoppel," §§ 35-51.

Sufficiency to maintain trespass to try title, see "Trespass to Try Title," § 6.

**AFTER-BORN CHILDREN.***Cross-References.*

Operation and effect of judgment, see "Judgment," § 686.

Right to inherit, see "Descent and Distribution," § 47.

Rights under will, see "Wills," § 497.

*Annotation.*

1 Words and Phrases, 257.

**AGE.***Cross-References.*

See "Guardian and Ward"; "Infants"; "Parent and Child."

Affecting capacity to marry, see "Marriage," § 5.

Affecting qualifications of pupils in public schools, see "Schools and School Districts," § 152.

Affecting qualifications of voters, see "Elections," § 66.

At which children are chargeable with contributory negligence, see "Negligence," § 85.

Averment as to age of accused in indictment for rape, see "Rape," § 20.

Belief as to age of female, defense to charge of abduction, see "Abduction," § 2.

Corroboration of testimony of female as to, in prosecution for abduction, see "Abduction," § 13.

Criminal responsibility as affected by age of accused, see "Rape," § 3.

Declarations or family records and reputation as to age, see "Evidence," §§ 285-297.

Element in offense against child, see "Abduction," § 1.

Evidence, see "Criminal Law," §§ 421, 434, 436; "Evidence," §§ 191, 321, 333; "Rape," § 41; "Seduction," § 41.

Of accused, finding in verdict, see "Criminal Law," § 882.

Of consent to sexual intercourse, see "Rape," §§ 13, 27, 31, 52.

Of female, allegations in indictment for rape, see "Rape," § 23.

Offenses against infants, see "Abduction"; "Kidnapping"; "Rape."

Of juror ground for new trial, see "Criminal Law," § 923.

Of person insured, affecting validity of policy, see "Insurance," § 290.

Of persons accused of incest, see "Incest," § 4.

Opinion evidence, see "Criminal Law," § 454; "Evidence," § 474.

Qualification of grand juror, see "Grand Jury," § 5.

Sufficiency of evidence as to age of accused, see "Criminal Law," § 566.

*Annotation.*

1 Words and Phrases, 260.

**AGENCY.**

*Cross-References.*

See "Principal and Agent."

License taxes on agents in general, see "Licenses," § 11.

*Annotation.*

1 Words and Phrases, 261, 262.

**AGGRAVATED ASSAULT.**

*Cross-References.*

See "Assault and Battery," § 54.

Assault with intent to kill, see "Homicide," §§ 84-100.

Assault with intent to rape, see "Rape."

Assault with intent to rob, see "Robbery."

*Annotation.*

1 Words and Phrases, 270-271.

**AGGRAVATION.**

*Cross-References.*

Evidence of on proceedings to sentence on plea of guilty, see "Criminal Law," § 980.

Of damages, see "Damages," § 58.

Of injury, see "Damages," §§ 33, 34.

Pleading matters of aggravation, see "Indictment and Information," §§ 113, 114.

*Annotation.*

5 Words and Phrases, 4415.

**AGGREGATE.**

*Cross-Reference.*

Of claims, effect on jurisdictional amount, see "Appeal and Error," § 61; "Courts," § 121.

*Annotation.*

1 Words and Phrases, 271.

**AGGREGATION.**

*Cross-Reference.*

Of parts, distinguished from patentable combinations, see "Patents," § 25.

*Annotation.*

1 Words and Phrases, 271.

**AGISTMENT.**

*Cross-Reference.*

See "Animals," §§ 22-26.

*Annotation.*

1 Words and Phrases, 278.

**AGREED CASE.**

*Cross-References.*

See "Stipulations."

Abstract of record on appeal, see "Appeal and Error," § 587.

Agreed statement instead of disclosure by garnishee, see "Garnishment," § 150.

Case or statement on appeal, see "Appeal and Error," § 573.

For submission of controversy to court, see "Submission of Controversy."

On application for license, see "Intoxicating Liquors," § 70.

Review where trial below was on agreed case, see "Appeal and Error," §§ 845, 850.

Stipulations as part of record for purpose of review, see "Appeal and Error," § 519.

Stipulations as to contents of record for review, see "Appeal and Error," § 539.

Submission to arbitrators, see "Arbitration and Award," §§ 1-25.

*Annotation.*

1 Words and Phrases, 281.

**AGREEMENT.**

*Cross-References.*

See "Contracts."

For continuance, see "Continuance," § 9.

For immunity from prosecution for testifying for state, see "Criminal Law," § 42.

For nol. pros. of criminal prosecution, see "Criminal Law," § 302.

Relating to amount, rate or items of costs, see "Costs," § 148.

Relating to costs in general, see "Costs," § 10.

## AGRICULTURE.

*Scope-Note.*

[INCLUDES promotion and regulation of agricultural pursuits in general; public aid and protection to those engaged therein; agricultural societies; agricultural liens; and other incidental rights and remedies.

[EXCLUDES agricultural colleges (see "Colleges and Universities"); bounties (see "Bounties"); drainage of lands (see "Drains"), levees (see "Levees"), and irrigation (see "Waters and Water Courses"); leases of agricultural lands and liens for rent (see "Landlord and Tenant"); ownership of crops (see "Crops"); regulation of transportation, storage, and inspection of agricultural products (see "Commerce";

"Carriers"; "Warehousemen"; "Inspection"); and matters affecting the relation between employers and employes (see "Master and Servant"). For complete list of matters excluded, see cross-references, post.]

#### *Analysis.*

- § 1. Constitutional and statutory provisions.
- § 2. Agricultural boards and officers.
- § 3. Public aid.
- § 4. Agricultural societies.
- § 5. Agricultural exhibitions and fairs.
- § 6. Co-operative corporations or associations.
- § 7. Fertilizers.
- § 8. Weeds and other noxious plants.
- § 9. Destructive insects, birds, and other animals.
- § 10. Agricultural liens.
- § 11. — Right to lien.
- § 12. — Proceedings to perfect.
- § 13. — Operation and effect.
- § 14. — Waiver, discharge, release, and satisfaction.
- § 15. — Enforcement.
- § 15½. — Transfer or removal of property subject to lien.
- § 16. Illegal traffic in agricultural products.

#### *Cross-References.*

- |   |  |
|---|--|
| <p>Agricultural colleges, see "Colleges and Universities."</p> <p>Agricultural employes, see "Master and Servant," § 52.</p> <p>Agricultural fixtures, see "Fixtures," § 16.</p> <p>Agricultural lands, exemption from municipal taxation, see "Municipal Corporations," § 967.</p> <p>Agricultural lands, inclusion within city, see "Municipal Corporations," § 7.</p> <p>Agricultural lands, liability to assessments for public improvements, see "Municipal Corporations," § 424.</p> <p>Agricultural lands, municipal taxation of, see "Municipal Corporations," § 966.</p> <p>Condition of railroad right of way as affecting productiveness of adjoining land, see "Railroads," § 73.</p> <p>Contracts relating to, see "Contracts," § 200.</p> <p>Crops, property in, see "Crops."</p> | <p>Cultivation of land under farm lease, see "Landlord and Tenant," §§ 135-139.</p> <p>Custom as to right to away going crops, see "Customs and Usages," § 15.</p> <p>Drainage of lands, see "Drains."</p> <p>Irrigation, see "Waters and Water Courses," §§ 44, 213-266.</p> <p>Liability for destruction of property by fire, negligently set out, see "Negligence," § 21.</p> <p>Licenses for sale of agricultural products, see "Licenses."</p> <p>Prosecution for fraudulent breach of contract to perform services on farm, see "Master and Servant," § 67.</p> <p>Protection and promotion of growth of trees not grown for their fruit or other annual products, see "Woods and Forests."</p> <p>Right of adjoining owner to use railroad right of way for agricultural purposes, see "Railroads," § 73.</p> |
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### **§ 1. Constitutional and statutory provisions.**

#### *Cross-References.*

- Act declaring places infested with pests injurious to plants to be nuisances and providing for abatement thereof at expense of owner as interfering with property rights, see "Constitutional Law," § 87.
- Special legislation, see "Statutes," § 88.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### **§ 2. Agricultural boards and officers.**

#### *Cross-References.*

- Constitutionality of act providing for appointment of fruit tree inspectors, see ante, § 1.
- Appointment of agricultural board by Legislature as encroachment on executive, see "Constitutional Law," § 58.
- Conferring judicial power on horticultural commission, see "Constitutional Law," § 80.
- Delegation of legislative power to board of agriculture, see "Constitutional Law," § 62.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

Excuses for default in action against, see "Judgment," § 143.

Liability for false imprisonment, see "False Imprisonment," § 15.

Subject and title of act relating to state horticultural commission, see "Statutes," § 119.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 3. Public aid.

#### *Cross-References.*

Bounties for production of sugar, see "Bounties," § 7.

Uniformity of tax, see "Taxation," § 40.

(a) The appropriation made by the state for the state agricultural association by Acts 1872, p. 462, c. 282, being clearly intended as a donation, there being nothing in the title or body of the act to indicate that it was a contribution to be secured by Acts 1870, p. 124, c. 89, providing that contributors to improvements for the association should share in the proceeds of its property in case of its dissolution, the state is not entitled, as to such appropriations, to so share in such proceeds.—*Maryland Jockey Club of Baltimore City v. State*, 106 Md. 413, 67 Atl. 239; *State v. Maryland Jockey Club of Baltimore City*, *Ibid*; *Ap-pold v. Same*, *Ibid*; *Jenkins v. Same*, *Ibid*; *Fitzgerald v. Same*, *Ibid*; *Alt v. Same*, *Ibid*; *Fisher v. Same*, *Ibid*.

### § 4. Agricultural societies.

#### *Cross-References.*

Public aid, see ante, § 3.

Consent to trespass on property of, see "Trespass," § 25.

Dissolution, see "Corporations," § 608.

Exemption from local assessments, see "Municipal Corporations," § 434.

Exemption from taxation, see "Taxation," 211.

Taxation, see "Taxation," § 117.

(a) An agricultural association has the right, in the interest of the public and for the protection of its own rights, on reasonable complaints or from its own knowledge, to exclude from its grounds persons guilty of dishonest conduct and corrupt methods in dealing with patrons.—*Harford Agricultural & Breeders' Assn. v. Somerville*, 120 Md. 572, 87 Atl. 937.

(b) An agricultural association, though having sold to another, as it had the right, the privilege of selling feed on its grounds,

and though having passed a resolution prohibiting any one else delivering feed thereon, having by the conduct of itself and officers led another to believe he would be permitted to deliver feed on its grounds, he should be allowed by it to carry out his contracts, previously made, to deliver feed to persons having horses on the grounds, and it should be enjoined from preventing it.—*Harford Agricultural and Breeders' Ass'n v. Somerville*, 120 Md. 572, 87 Atl. 937.

(c) In an action for injuries to plaintiff by the giving way of an iron rail separating the front of a grand stand from a race course on defendant's fair grounds, evidence that a witness made an examination of the place about a month after the accident, and with reference to the condition in which he found a stay rod which had previously helped to support the rail, was admissible; the test of admissibility of evidence of a subsequent condition of the place of the accident being the relevancy of the facts testified to, and not the time of the examination.—*Agricultural & Mech. Ass'n of Wash. Co. v. Gray*, 118 Md. 600, 85 Atl. 291.

(d) Plaintiff, a patron of defendant's fair, was injured by the giving way of a guard rail separating the platform in front of the grand stand from the race track, causing plaintiff to be precipitated to the track, some 10 or 12 feet below. A portion of the wall on which the railing was erected was constructed of loose stones, and the post that broke out from the stone was set in but 1¼ inches. It was also shown that the crowd that pressed against the rail at the time of the accident was not unusual. *Held*, sufficient evidence to raise an inference of actionable negligence.—*Agricultural and Mech. Ass'n of Wash. Co. v. Gray*, 118 Md. 600, 85 Atl. 291.

(e) Where plaintiff, a patron of defendant's fair, was injured by the giving way of a rail separating its grand stand platform from a race track, a request to charge, which was susceptible of misleading the jury to believe that those erecting the rail were independent contractors, and, if so, defendant was absolved from liability, was

properly refused.—*Agricultural and Mech. Ass'n of Wash. Co. v. Gray*, 118 Md. 600, 85 Atl. 291.

(f) Where plaintiff was injured by falling from a platform in front of defendant's grand stand onto a race track, by the giving way of a defective guard rail while plaintiff was viewing races held at defendant's fair, he was an invitee, and was not negligent in occupying a place provided by defendant for witnessing the races.—*Agricultural and Mech. Ass'n of Wash. Co. v. Gray*, 118 Md. 600, 85 Atl. 291.

(g) Where it is shown that money represented by a note went into improvements on the land of the Maryland State Agricultural & Mechanical Association, its holder may participate in the distribution of the fund arising from the sale of property belonging to the association, under Acts 1870, p. 124, c. 89, providing that the city of Baltimore and those citizens who have contributed, or may contribute, to the purchase of land or to improvements on land for the use of the State Agricultural Association, shall, in case of dissolution of the association, receive from the net proceeds of the sale of its property such sum as the amount of money paid by said corporation or individual citizens may bear to the aggregate amount contributed by the state, the city of Baltimore, and the individual citizens, and any indorsement on the note will be credited on the principal and not on the interest, since contributors are not entitled to interest on their claims under the act.—*Maryland Jockey Club v. State*, 106 Md. 413, 68 Atl. 613.

(h) Acts 1867, c. 128, incorporated an association to hold agricultural exhibitions, and appropriated money to assist it to purchase grounds, to be held till its dissolution, or till it should fail to hold any exhibition for three successive years, when the lands should be conveyed to the state. Acts 1870, c. 89, and Acts 1890, c. 73, provided for the sale of the land on dissolution of the association, and payment of the proceeds to the state and other parties in proportion to the amounts they had furnished it, and repealed acts inconsistent therewith. *Held*, that these acts did not authorize sale of

the land on failure to hold exhibitions for three years, but only on dissolution.—*State v. Maryland Agricultural & Mechanical Ass'n*, 98 Md. 216, 56 Atl. 484.

(i) Allegations that there has been a non-use and misuse of its corporate powers by an agricultural association, that it has held no exhibitions for many years, and has permitted another corporation to take unlawful possession of its property for other purposes, and that the purposes for which it was formed have been relinquished and abandoned, are insufficient to show its actual dissolution.—*State v. Maryland Agricultural & Mechanical Ass'n*, 98 Md. 216, 56 Atl. 484.

## § 5. Agricultural exhibitions and fairs.

### *Cross-References.*

Liabilities of society for injuries, see ante, § 4.

Liability of state for torts of fair company, see "States," § 193.

Subject and title of acts relating to state fairs, see "Statutes," § 119.

Validity of appropriation for establishment and maintenance, see "States," § 114.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 6. Co-operative corporations or associations.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 7. Fertilizers.

(a) An indictment under Code, art. 61, § 2, subsec. 2, requiring that every package of fertilizer shall bear in print or be accompanied by a statement showing its weight, etc., alleged that accused sold fertilizer, the package "not bearing in print (and the same not being accompanied by) a statement showing," etc. *Held*, that the indictment was demurrable, as ambiguous as to whether the parenthesis was intended to negative the giving of the statement in one way, or to charge liability because of failure to make the statement in both ways, which would be no offense.—*State v. Long*, 94 Md. 637, 51 Atl. 827.

(b) Acts 1882, c. 451, "to prevent fraud in the manufacture and sale of commercial fertilizers and bone dust in Har-

ford county," is not repealed by implication by the general act of 1886 "to regulate the inspection and sale of commercial fertilizers in the state of Maryland"; the acts being different in their objects and provisions, and providing for their execution by different officers, and, not being inconsistent, they may stand together, and both are in force in Harford county (see Code, art. 61).—*Snowden v. State*, 69 Md. 203, 14 Atl. 528.

### § 8. Weeds and other noxious plants.

#### *Cross-References.*

Constitutionality of statutes. see ante, § 1.  
Prohibiting permitting growth of weeds as taking property without just compensation, see "Eminent Domain," § 2.  
Subjects and titles of act requiring railroad companies to prevent noxious weeds growing on right of way, see "Statutes," § 113.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 9. Destructive insects, birds, and other animals.

#### *Cross-References.*

Constitutionality of statutes, see ante, § 1.  
Act declaring places infested with pests injurious to plants to be nuisances and providing for abatement thereof at expense of owners as interfering with property rights, see "Constitutional Law," § 87.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 10. Agricultural liens.

#### *Cross-Reference.*

Priority between laborer's lien and chattel mortgage on crops, see "Chattel Mortgages," § 138.

### § 11.— Right to lien.

(a) B. entered into a contract with A., by which the latter was to become B.'s agent for the sale of his crops, advance him money, and accept his drafts, for the payment of which he pledged his crops on hand and the growing crops of the year 1847; and, upon the faith of this agreement, A. made large advances to B., and at the time of his death, which occurred in January, 1848, he was largely indebted to him. Upon a bill filed by A. claiming a lien upon the corn and tobacco in hand, and on the crop of wheat sown in the fall of 1847, and to

enforce the specific performance of this contract, it was *held* that this was a positive agreement on the part of B. to send to A., to cover his advances to him, his crops of wheat, tobacco, and corn, which would be marketable in the year 1847.—*Sullivan v. Tuck*, 1 Md. Ch. 59. [*Cited and annotated* in 6 L. R. A. (N. S.) 589, on specific performance of contract to give security.]

### § 12.— Proceedings to perfect.

### § 13.— Operation and effect.

### § 14.— Waiver, discharge, release, and satisfaction.

### § 15.— Enforcement.

#### *Cross-Reference.*

Wrongful seizure as malicious prosecution, see "Malicious Prosecution," § 13.

### § 15½.— Transfer or removal of property subject to lien.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 16. Illegal traffic in agricultural products.

## AID.

#### *Cross-References.*

Aiding escape of apprentice, see "Apprentices," § 22.

Aiding escape of prisoner, see "Escape," § 5.

Societies, see "Beneficial Associations"; "Charities."

#### *Annotation.*

1 Words and Phrases, 289-291.

## AIDER BY VERDICT.

#### *Cross-References.*

In civil actions, see "Parties"; "Pleading," §§ 432-437.

In criminal prosecutions, see "Indictment and Information," §§ 201-203.

## AIDERS AND ABETTORS.

#### *Cross-References.*

Criminal responsibility, see "Bribery," § 3½; "Criminal Law," §§ 59-82; "Homicide," § 80; "Larceny," § 27.

Indictment, see "Indictment and Information," §§ 82-85.

#### *Annotation.*

1 Words and Phrases, 293, 294.

## AIR.

#### *Cross-References.*

Easements, see "Easements."

Obstruction, see "Adjoining Landowners," § 10.



Obstruction, as element of compensation under law of eminent domain, see "Eminent Domain," § 105.

*Annotation.*

1 Words and Phrases, 294.

**AIR BRAKES.**

*Cross-Reference.*

See "Master and Servant," § 111.

**ALASKA.**

*Cross-References.*

License taxes on occupations and privileges in Alaska, see "Licenses," §§ 4, 7.  
Powers of towns, see "Municipal Corporations," § 57.

Regulation of sale of liquor, see "Intoxicating Liquors," § 3.

Rights of occupants of public lands, see "Public Lands," § 31.

Title to lands in Alaska, see "Public Lands," § 4.

See "Territories," § 18.

*Annotation.*

1 Words and Phrases, 295.

**ALCOHOLIC LIQUORS.**

*Cross-Reference.*

See "Intoxicating Liquors."

*Annotation.*

1 Words and Phrases, 296.

**ALCOHOLISM.**

*Cross-References.*

See "Drunkards."

Cause of death or injury of insured, see "Insurance," § 442.

**ALDERMEN.**

*Cross-References.*

Council or other governing body of municipal corporation, see "Municipal Corporations," §§ 80-122.

Jurisdiction in judicial proceedings, see "Courts," § 180.

Mandamus to compel restoration to office, see "Mandamus," § 77.

*Annotation.*

1 Words and Phrases, 296, 297.

**ALEATORY CONTRACTS.**

*Cross-Reference.*

See "Gaming," §§ 1-50.

*Annotation.*

1 Words and Phrases, 297.

**ALIAS.**

*Cross-References.*

Assumed names, see "Names," § 10; "Parties," § 67.

Designation of accused in criminal prosecution, see "Indictment and Information," § 81.

*Annotation.*

1 Words and Phrases, 297, 298.

**ALIAS WRITS.**

*Cross-References.*

See "Attachment," § 155; "Ejectment," § 120; "Execution," §§ 99, 438; "Garnishment," § 94; "Process," § 45.

Preliminary warrant, see "Criminal Law," § 217.

*Annotation.*

1 Words and Phrases, 298.

**ALIBI.**

*Cross-References.*

Absence of witness to show as ground for continuance, see "Criminal Law," §§ 594-597.

Admissibility of evidence, see "Criminal Law," § 358.

Averments as to in application for continuance, see "Criminal Law," § 603.

Burden of proof, see "Criminal Law," § 333.

Establishment by documentary evidence, see "Criminal Law," § 434.

Instructions as to defense, see "Criminal Law," §§ 775, 782.

Nature of defense, see "Criminal Law," § 31.

Newly-discovered evidence to show ground for new trial, see "Criminal Law," §§ 939, 942, 945.

Presumptions from failure to establish alibi, see "Criminal Law," § 319.

Proof of by defendant in bastardy proceedings, see "Bastards," § 65.

Proof of on application for continuance, see "Criminal Law," § 608.

Questions for jury, see "Criminal Law," § 739.

Statement made to lay foundation for false alibi as evidence of guilty knowledge, see "Criminal Law," § 353.

Sufficiency of evidence, see "Criminal Law," § 572.

*Annotation.*

1 Words and Phrases, 298, 299.

**ALIENATION.**

*Cross-References.*

Conditions in deeds restraining alienation, see "Deeds," § 149.

Disposal of public lands, see "Mines and Minerals," §§ 1-38; "Public Lands."

Of affection of husband or wife, see "Husband and Wife," §§ 322-337.

Of lands of Indians, see "Indians," § 15.

Of married woman's separate property, see "Husband and Wife," §§ 179-202.

Of property insured, see "Insurance," § 328.

Of property of religious societies, see "Religious Societies," § 20.

Property subject to sale, see "Sales," §§ 9-14; "Vendor and Purchaser," §§ 4-8.

Right of alienation of property in general, see "Property," § 11.

Suspension of absolute power of alienation, see "Perpetuities," §§ 6, 7.

*Annotation.*

1 Words and Phrases, 302, 306.

# ALIENS.

## *Scope-Note.*

[INCLUDES persons of foreign allegiance; their rights and disabilities in general; exclusion or expulsion from the country; regulation and restriction of immigration; and admission to citizenship.

[EXCLUDES rights and liabilities in respect of particular kinds of property or particular remedies (see "*Mines and Minerals*"; "*Shipping*"; "*Patents*"; "*Copyrights*"; "*Trade-Marks and Trade-Names*"; and other specific heads); application of law of domicile (titles of particular subjects involved); jurisdiction of particular courts (see "*Courts*"); escheat proceedings (see "*Escheat*"); and alien enemies (see "*War*"). For complete list of matters excluded, see cross-references, post.]

## *Analysis.*

### **I. Disabilities.**

- § 1. Who are aliens.
- § 2. Evidence of alienage.
- § 3. Status in general.
- § 4. Protection of persons and person rights.
- § 5. Real Property.
- § 6. — Disabilities in general.
- § 7. — Right to take by purchase or devise.
- § 8. — Right to dower or curtesy.
- § 9. — Right to take or transmit by decent.
- § 10. — Constitutional and statutory restrictions.
- § 11. — Grants from the state.
- § 12. — Enabling acts.
- § 13. — Effect of treaties.
- § 14. Personal property.
- § 15. Subjection to law of the country.
- § 16. Actions.
- § 17. Criminal prosecutions.
- § 17(a) Eligibility to vote.
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### **II. Exclusion or Expulsion.**

- § 18. Power to exclude or expel aliens in general.
- § 19. Chinese exclusion acts.
- § 20. — Constitutionality.
- § 21. — Construction and operation in general.
- § 22. — Effect of treaties with China.
- § 23. Chinese persons excluded.
- § 24. — Laborers.
- § 25. — Persons other than laborers.
- § 26. — Persons born in United States of Chinese parentage.
- § 27. — Persons departing from and returning to United States.
- § 28. — Certificates of identification.
- § 29. Registration and certification of Chinese residents.
- § 30. Exclusion and deportation of Chinese.
- § 31. — In general.
- § 32. — Proceedings and review.
- § 33. Offenses against Chinese exclusion acts.

**II. Exclusion or Expulsion—Continued.**

- § 34. — Being unlawfully in United States.
- § 35. — Aiding unlawful entry.
- § 36. — Liability of vessel, owner, or master.
- § 37. Actions for penalties under Chinese exclusion acts.
- § 38. Criminal prosecutions under Chinese exclusion acts.

**III. Immigration.**

- § 39. Power to regulate or restrict immigration.
- § 40. Constitutional and statutory provisions.
- § 41. Immigration officers.
- § 42. — Appointment and qualification.
- § 43. — Compensation and expenses.
- § 44. — Powers, duties, and proceedings.
- § 45. Immigrants excluded.
- § 46. — In general.
- § 47. — Convicts.
- § 49. — Liable to become a public charge.
- § 50. — Imported under contracts to labor.
- § 51. — Women imported for purposes of prostitution.
- § 52. Detention and return of immigrants.
- § 53. — In general.
- § 54. — Proceedings and review.
- § 55. Offenses against immigration laws.
- § 56. — Unlawful importation.
- § 57. — Liability of vessel, owner, or master.
- § 58. Actions for penalties under immigration laws.
- § 59. Criminal prosecutions under immigration laws.

**IV. Naturalization.**

- § 60. Power to naturalize in general.
- § 61. Persons capable.
- § 62. Qualifications in general.
- § 63. Minor residents.
- § 64. Widow and children of alien dying after declaration of intention.
- § 65. Aliens honorably discharged from military service.
- § 66. Seamen serving on board merchant vessels.
- § 67. Jurisdiction of courts.
- § 68. Proceedings.
- § 69. Record, certificate, and evidence.
- § 70. Operation and effect.
- § 71. Fraud in obtaining naturalization.
- § 72. Offenses against naturalization laws.

*Cross-References.*

See "Citizens"; "Indians."

Alienage as affecting limitation of actions, see "Limitation of Actions," § 71.

Alienage of juror ground for new trial, see "Criminal Law," § 923.

Alienage of parties as ground for removal of cause to federal court, see "Removal of Causes," §§ 26-47.

Consul as administrator of estate of deceased alien, see "Ambassadors and Consuls," § 5.

Derivative settlement of children of aliens, see "Paupers," § 20.

Designation as devisees or legatees in will, see "Wills," § 506.

Detention in hospital, see "Hospitals," § 5.

Eligibility for appointment as executor, see "Executors and Administrators," § 15.

Eligibility for appointment as guardian, see "Guardian and Ward," § 10.

Eligibility for jury service, see "Grand Jury," § 5; "Jury," § 46.

Eligibility for office, see "Municipal Corporations," § 138; "Officers," § 21.  
 Eligibility to vote, see "Elections," §§ 68-70.  
 Escheat, see "Escheat."  
 Jurisdiction of federal courts in actions by or against aliens, see "Courts," §§ 321, 456.  
 Liability of property to taxation, see "Taxation," §§ 93-96.  
 Liability on bond given to secure performance of municipal contract invalid as violating alien labor law, see "Municipal Corporations," § 347.  
 Qualifications for entry on public lands, see "Public Lands," § 30.  
 Regulation of fishery rights, see "Fish," § 10.  
 Removal of actions by or against aliens to United States court, see "Removal of Causes," § 41.  
 Repugnancy in devise to alien, see "Wills," § 471.

Right of state to declare alien capable of inheriting or taking property, see "States," § 7.  
 Rights under Oregon donation act, see "Public Lands," § 44.  
 Right to acquire legal settlement, see "Paupers," § 19.  
 Right to acquire mineral lands, see "Mines and Minerals," § 12.  
 Right to cut timber from public lands, see "Public Lands," § 10.  
 Right to purchase state lands, see "Public Lands," § 166.  
 Testamentary capacity, see "Wills," § 24½.  
 Treaties, see "Treaties."  
 Uniformity of taxation, see "Taxation," § 40.  
 Validity of municipal contract prohibiting employment of alien labor, see "Municipal Corporations," § 330.

#### NOTE.

Few Maryland cases touching this subject are to be found in the Maryland Reports. Nevertheless, the titles and sub-titles are given as they appear in the American Digest Key Number classification, so that the investigator may at one time accomplish the double purpose of learning whether a given point has been passed upon by the Maryland Courts and also ascertain the particular place in the American Digest System where all state and federal cases upon the point will be found collected.

References to valuable notes in the L. R. A. and copious cross-references will also be found throughout the title.

### I. DISABILITIES.

#### § 1. Who are aliens.

(a) Under the act of Congress of 1802, chapter 28, children of naturalized parents who are under 21, and reside in this country at the time of naturalization, are citizens.—*Brown v. Shilling*, 9 Md. 74.

(b) Section 4 of the act of Congress of 1802 (chapter 28) was not prospective, but applied only to persons who were citizens at the time of its passage, and its proviso denied citizenship to the children of persons born abroad unless their fathers had resided in this country.—*Brown v. Shilling*, 9 Md. 74.

#### § 2. Evidence of alienage.

##### *Cross-Reference.*

Evidence of citizenship, see "Citizens," § 10.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 3. Status in general.

##### *Annotation.*

Effect of marriage on wife's status as an alien.—22 L. R. A. 148, note.

(a) A payment into a state treasury, under a state law of sequestration, of a debt owing

to a British subject by an American citizen before the war of the Revolution, discharged the debt, though the treaty of peace between Great Britain and the United States provided that creditors on either side shall meet with no lawful impediment to the recovery of all bona fide debts.—*Court v. Vanbibber*, 3 H. & McH. 140. (Reversed by U. S. Supreme Court in 3 Dallas 199, 342.)

#### § 4. Protection of persons and personal rights.

(a) A payment into a state treasury, under a state law of sequestration, of a debt owing to a British subject by an American citizen before the war of the Revolution, discharged the debt, though the treaty of peace between Great Britain and the United States provided that creditors on either side shall meet with no lawful impediment to the recovery of all bona fide debts.—*Court v. Vanbibber*, 3 H. & McH. 140. (Reversed by U. S. Supreme Court in 3 Dallas 199, 342.)

#### § 5. Real property.

#### § 6.—Disabilities in general.

(a) No British subject could hold land in Maryland on the 19th of November, 1794, the time when the treaty was made with

Great Britain.—Owings v. Norwood, 2 H. & J. 104.

(b) The title of an alien to land purchased is good against everybody but the state, and can only be divested by office found, or by some act done by the state to acquire possession.—McCreery v. Allender, 4 H. & McH. 409. [*Cited and annotated* in 15 L. R. A. (N. S.) 381, on necessity for judicial proceeding to effect escheat]; Same v. Wilson, Ibid. 412; Cunningham v. Browning, 1 Bland 299; Buchanan v. Deshon, 1 H. & G. 280. [*Cited and annotated* in 31 L. R. A. 177, on alien's right to inherit; in 15 L. R. A. (N. S.) 381, on necessity for judicial proceeding to effect escheat.]

#### § 7.—Right to take by purchase or devise.

##### Annotation.

For Md. statutory provisions, see Code, art. 3.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 8.—Right to dower or curtesy.

##### Cross-Reference.

Enabling acts, see post, § 12.

(a) The statute of 1813 did not authorize a female alien to be endowed, if she never resided in the United States during her coverture.—Buchanan v. Deshon, 1 H. & G. 280. [*Cited and annotated* in 31 L. R. A. 177, on alien's right to inherit; in 15 L. R. A. (N. S.) 381, on necessity for judicial proceeding to effect escheat.]

(b) An alien feme covert is not dowable by the common law.—Buchanan v. Deshon, 1 H. & G. 280. [*Cited and annotated* in 31 L. R. A. 177, on alien's right to inherit; in 15 L. R. A. (N. S.) 381, on necessity for judicial proceeding to effect escheat.]

#### § 9.—Right to take or transmit by descent.

##### Annotation.

For present Md. statutory provision see Code, art. 3.

Tracing descent through alien.—37 L. R. A. (N. S.) 108, note.

Alien's right to inherit.—31 L. R. A. 177, note.

(a) The statute of 1813 did not authorize a female alien to inherit if she never resided in the United States during her coverture.—Buchanan v. Deshon, 1 H. & G. 280. [*Cited*

and annotated in 31 L. R. A. 177, on alien's right to inherit; in 15 L. R. A. (N. S.) 381, on necessity for judicial proceeding to effect escheat.]

#### § 10.—Constitutional and statutory restrictions.

##### Annotation.

Effect of state statutes and Constitutions upon inheritance through an alien.—31 L. R. A. 146, note.

Effect of state constitutions and statutes upon the question of inheritance by or from an alien.—31 L. R. A. 85, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 11.—Grants from the state.

#### § 12.—Enabling acts.

##### Annotation.

For Md. statutory provision see Code, art. 3.

#### § 13.—Effect of treaties.

#### § 14.—Personal property.

#### § 15.—Subjection to law of the country.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 16.—Actions.

##### Cross-References.

Admiralty jurisdiction of suits between foreigners, see "Admiralty," § 5.

Contest of will, see "Wills," § 229.

For wrongful death, see "Death," § 31.

Jurisdiction of courts in general, see "Courts," § 6.

Jurisdiction of Court of Claims of Indian depredation claim, as dependent on citizenship of claimant, see "Courts," § 456.

Revival of action by personal representative of deceased alien, see "Abatement and Revival," § 75.

Striking out alien enemy as party, see "Parties," § 65.

(a) *Quære*, as to the right of an alien to maintain ejectment for freehold lands in this state.—Guyer v. Smith, 22 Md. 239, 85 Am. Dec. 650. [*Cited and annotated* in 31 L. R. A. 177, on alien's right to inherit.]

(b) An unnaturalized alien, residing and doing business in the state, is for commercial purposes a "citizen," in contemplation of the attachment laws.—Field v. Adreon, 7 Md. 209. [*Cited and annotated* in 19 L. R. A. 668, on what is nonresidence for attachment purposes.]

#### § 17.—Criminal prosecutions.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 17(a). Eligibility to vote.***Cross-References.*

See 2 Cent. Dig., Aliens, § 68.  
See "Elections," §§ 68-70, in this digest.

**§ 17(b). Eligibility for office.***Cross-References.*

See 2 Cent. Dig., Aliens, § 69.  
See "Municipal Corporations," § 138;  
"Officers," § 21, in this digest.

**II. EXCLUSION OR EXPULSION.***Cross-References.*

Act conferring arbitrary power on particular officer as deprivation of liberty or property without due process of law, see "Constitutional Law," § 318.  
Conspiracy to violate exclusion act, see "Conspiracy," § 43.  
Exclusion of alien anarchists as abridging freedom of speech, see "Constitutional Law," § 90.  
Exclusion of alien anarchists as prohibiting the free exercise of religion, see "Constitutional Law," § 84.  
Exclusion of alien anarchists as violation of constitutional rights, see "Constitutional Law," § 82.  
Extortion by Chinese inspectors, see "Extortion," § 10.  
Scope of executive powers and functions, see "Constitutional Law," § 80.

**§ 18. Power to exclude or expel aliens in general.****§ 19. Chinese exclusion acts.****§ 20.— Constitutionality.****§ 21.— Construction and operation in general.****§ 22.— Effect of treaties with China.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 23. Chinese persons excluded.***Cross-References.*

Evidence, see post, § 32.  
Who are citizens, see "Citizens," § 3.

**§ 24.— Laborers.****§ 25.— Persons other than laborers.****§ 26.— Persons born in United States of Chinese parentage.****§ 27.— Persons departing from and returning to United States.****§ 28.— Certificates of identification.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 29. Registration and certification of Chinese residents.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 30. Exclusion and deportation of Chinese.****§ 31.— In general.****§ 32.— Proceedings and review.***Cross-References.*

Review by habeas corpus, see "Habeas Corpus," § 23.  
Review by habeas corpus, conclusiveness of discharge on question of right of entry, see "Habeas Corpus," § 117.  
Review by habeas corpus, disposition of person, see "Habeas Corpus," § 111.  
Review by habeas corpus, effect of remedy by appeal, see "Habeas Corpus," § 4.  
Review by habeas corpus, scope of inquiry, see "Habeas Corpus," § 92.  
Review by habeas corpus, sufficiency of return, see "Habeas Corpus," § 76.  
Right to jury trial, see "Jury," § 19.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 33. Offenses against Chinese exclusion acts.***Cross-Reference.*

Criminal prosecutions, see post, § 38.

**§ 34.— Being unlawfully in United States.****§ 35.— Aiding unlawful entry.****§ 36.— Liability of vessel, owner, or master.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 37. Actions for penalties under Chinese exclusion acts.****§ 38. Criminal prosecutions under Chinese exclusion acts.***Cross-References.*

Indictment, designation of accused, see "Indictment and Information," § 81.  
Indictment, joinder of counts, see "Indictment and Information," § 129.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**III. IMMIGRATION.***Cross-Reference.*

Power of state to quarantine immigrants, see "Health," § 24.

**§ 39. Power to regulate or restrict immigration.****§ 40. Constitutional and statutory provisions.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 41. Immigration officers.****§ 42.— Appointment and qualification.**

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

**§ 43.— Compensation and expenses.****§ 44.— Powers, duties, and proceedings.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 45. Immigrants excluded.***Cross-References.*

Who are aliens, see ante, § 1.

Who are citizens, see "Citizens," § 7.

**§ 46.— In general.****§ 47.— Convicts.****§ 48. (Omitted from the classification used herein.)****§ 49.— Liable to become a public charge.****§ 50.— Imported under contracts to labor.****§ 51.— Women imported for purposes of prostitution.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 52. Detention and return of immigrants.****§ 53.— In general.****§ 54.— Proceedings and review.***Cross-References.*

Effect of stipulation, see "Stipulations," § 18.

Review by habeas corpus, see "Habeas Corpus," § 23.

Review by habeas corpus, existence of remedy by appeal, see "Habeas Corpus," § 4.

Review by habeas corpus, scope of inquiry, see "Habeas Corpus," §§ 94, 95.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 55. Offenses against immigration laws.***Cross-Reference.*

Criminal prosecutions, see post, § 59.

**§ 56.— Unlawful importation.****§ 57.— Liability of vessel, owner, or master.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 58. Actions for penalties under immigration laws.***Cross-Reference.*

Jurisdiction of United States circuit courts, see "Courts," § 424.

**§ 59. Criminal prosecutions under immigration laws.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**IV. NATURALIZATION.***Cross-References.*

Effect as to status of Indian, see "Indians," § 27.

Form of equitable remedy to annul order admitting to citizenship, see "Judgment," § 454.

Time for application to vacate order admitting to citizenship, see "Judgment," § 386.

**§ 60. Power to naturalize in general.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 61. Persons capable.**

(a) Act Cong. 1802, c. 28, does not exclude females from the right of citizenship by naturalization.—Brown v. Shilling, 9 Md. 74.

**§ 62. Qualifications in general.****§ 63. Minor residents.****§ 64. Widow and children of alien dying after declaration of intention.****§ 65. Aliens honorably discharged from military service.****§ 66. Seamen serving on board merchant vessels.****§ 67. Jurisdiction of courts.***Annotation.*

Powers of state legislatures and courts in respect to naturalization.—30 L. R. A. 761, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 68. Proceedings.****§ 69. Record, certificate, and evidence.***Cross-References.*

Affecting right to locate mining claim, see "Mines and Minerals," § 12.

Evidence of citizenship, see "Citizens," § 10.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 70. Operation and effect.***Cross-Reference.*

Effect as to citizenship of children, see "Citizens," § 9.

(a) In proceedings by children claiming as heirs of a naturalized parent the court will not go into the question of the latter's capacity for naturalization, the certificate being taken as conclusive as to the propriety

of its issuance.—*Brown v. Shilling*, 9 Md. 74.

§ 71. **Fraud in obtaining naturalization.**

§ 72 **Offenses against naturalization laws.**

**Cross-References.**

See "Conspiracy," § 28.

Evidence in prosecution for perjury, see "Perjury," § 32.

Former jeopardy, see "Criminal Law," § 201.

Instructions in prosecution for perjury, see "Perjury," § 37.

Offense against state or United States, see "Criminal Law," § 16.

Variance in prosecution for perjury, see "Perjury," § 29.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**ALIMONY.**

**Cross-References.**

See "Divorce," §§ 199-288.

Commitment of defendant for refusing to pay alimony as imprisonment for debt, see "Constitutional Law," § 83.

Decree for alimony as claim provable against bankrupt, see "Bankruptcy," § 315.

In action for annulment of marriage, see "Marriage," § 62.

Separate maintenance of wife, see "Husband and Wife," §§ 283, 284, 285½-301.

**Annotation.**

1 Words and Phrases, 307-311.

**ALLOCATUR.**

**Cross-Reference.**

Allowance of writ of certiorari, see "Certiorari," § 44.

**ALLOTMENT.**

**Cross-References.**

Of common lands, see "Common Lands," § 14.

Of exemptions, see "Exemptions," § 128.

Of homestead, see "Homestead," §§ 49-54, 150, 199-201.

Of Indian lands, see "Indians," § 13.

Of real property on actual admeasurement of dower, see "Dower," §§ 90, 91.

Of shares of corporate stock, see "Corporations," § 87.

Of work on drain among landowners, see "Drains," §§ 48, 53.

**ALLOWANCE.**

**Cross-References.**

Additional to commissions of executor or administrator, see "Executors and Administrators," § 497.

Additional to commissions of trustee, see "Trusts," § 317.

Additional to costs in general, see "Costs," §§ 164-168.

Adjustment of claims and equities between parties to partition, see "Partition," §§ 83-88.

Of alimony or counsel fees and expenses in divorce proceedings, see "Divorce," §§ 199-288.

Of appeal or writ of error, see "Appeal and Error," §§ 358-368; "Criminal Law," § 1072.

Of bill of costs in criminal prosecution, see "Costs," §§ 314, 315.

Of bill of exceptions, see "Exceptions, Bill of," §§ 31-53.

Of claims against bankrupt's estate, see "Bankruptcy," § 341.

Of claims against corporation on dissolution, see "Corporations," § 626.

Of claims against county, see "Counties," §§ 204-206.

Of claims against estate assigned for benefit of creditors, see "Assignments for Benefit of Creditors," § 307.

Of claims against estate of decedent, see "Executors and Administrators," §§ 234-241.

Of claims against insolvent corporation, see "Corporations," § 565.

Of claims against insolvent's estate, see "Insolvency," § 116.

Of claims against municipal corporation, see "Municipal Corporations," § 1013.

Of claims against receiver, see "Receivers," § 151.

Of claims against school district, see "Schools and School Districts," § 112.

Of claims against town, see "Towns," § 62.

Of claims against United States, see "United States," §§ 113-116.

Of claims in partnership accounting, see "Partnership," § 341.

Of claims of creditors under judgment or decree in creditors' suit, see "Creditors' Suit," § 54.

Of compensation for maintenance of prisoner, see "Prisons," § 18.

Of compensation of public officers, see "Counties," § 75; "Officers," § 101; "States," § 64.

Of damages for frivolous appeal or delay, see "Costs," § 262.

Of judgment on trial of issues, see "Judgment," § 214.

Of separate maintenance to wife, see "Husband and Wife," §§ 283, 284, 285½-301.

Of supersedeas or stay on appeal or writ of error, see "Appeal and Error," §§ 477-481.

Of writ of certiorari, see "Certiorari," § 44.

Of writ of habeas corpus, see "Habeas Corpus," §§ 61-64.

Of writ of review, see "Review," § 20.

To surviving wife, husband, or children from estate of decedent, see "Executors and Administrators," §§ 173-201.

**Annotation.**

1 Words and Phrases, 347, 348.



**ALLUVION.***Cross-References.*

Ownership, see "Navigable Waters," §§ 42, 44; "Waters and Water Courses," §§ 93, 111.

*Annotation.*

1 Words and Phrases, 349, 350.

**ALMANAC.***Cross-Reference.*

Computation of time, see "Time."

**ALMSHOUSES.***Cross-Reference.*

See "Paupers," § 45.

*Annotation.*

1 Words and Phrases, 350, 351.

**ALTERATION.***Cross-References.*

See "Alteration of Instruments."

Of bridges over navigable waters, see "Navigable Waters," § 20.

Of buildings, lien for services rendered or materials furnished, see "Mechanics' Liens," § 26.

Of course or width of street, see "Municipal Corporations," § 655.

Of course or width of street, assessments for benefits, see "Municipal Corporations," § 416.

Of course or width of street, damages to abutting owners, see "Municipal Corporations," § 384.

Of drainage district, see "Drains," § 15.

Of drains, see "Drains," § 50.

Of easements, see "Easements," § 54.

Of election districts or precincts, see "Elections," § 48.

Of flow or discharge of water as ground for compensation, see "Eminent Domain," § 98.

Of geographical or political divisions, see "Counties," §§ 10-16; "Municipal Corporations," §§ 27-37; "Schools and School Districts," §§ 32-41; "Towns," §§ 6-11.

Of grade of street or highway as ground for compensation to abutting owners, see "Eminent Domain," § 101.

Of highways, see "Highways," §§ 70-73.

Of judicial districts, see "Courts," § 45.

Of landmarks, see "Boundaries," § 56.

Of leased premises, see "Landlord and Tenant," § 152.

Of levees, see "Levees," § 17.

Of marks and brands on animals, see "Animals," § 11.

Of party walls, see "Party Walls," § 8.

Of polling places, see "Elections," § 201.

Of private roads, see "Private Roads," § 3.

*Annotation.*

1 Words and Phrases, 360-365.

**ALTERATION OF INSTRUMENTS.***Scope-Note.*

[INCLUDES acts done upon instruments in writing, by a party or parties thereto or interested therein, by which the language or meaning is changed, and the materiality and effect of such alterations in general.

[EXCLUDES alterations of wills made by the testator (see "Wills"); rights of bona fide purchasers of altered negotiable paper (see "Bills and Notes"); alterations of records (see "Records"); forgery (see "Forgery"). For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Materiality.
- § 2. — Nature and extent of change in general.
- § 3. — Parties.
- § 4. — Consideration.
- § 5. — Subject-matter.
- § 6. — Place, time, and date.
- § 7. — Filling blanks.
- § 8. — Signatures and indorsements.
- § 9. — Marginal matter and annexed writings.
- § 10. Time of alteration.

- § 11. Persons making alteration, and intent.
- § 12. Authority or consent of parties.
- § 13. Ratification or waiver.
- § 14. Restoration of instrument.
- § 15. Effect upon rights of parties.
- § 16. — Written instruments in general.
- § 17. — Conveyances.
- § 18. — Contracts in general.
- § 19. — Obligations under seal.
- § 20. — Negotiable instruments.
- § 21. — Official certificates and returns.
- § 22. Persons who may complain of alteration or question validity of instrument.
- § 23. Rights founded on original transaction or consideration.
- § 24. Admissibility of instrument in evidence.
- § 25. Pleading.
- § 26. Evidence.
- § 27. — Presumptions and burden of proof.
- § 28. — Admissibility in general.
- § 29. — Weight and sufficiency.
- § 30. Questions for jury.

*Cross-References.*

See "Reformation of Instruments."

Amendment of certificate of acknowledgment, see "Acknowledgment," § 42.

Application in drainage proceedings as affecting liability for costs, see "Drains," § 38.

As affecting right to specific performance, see "Specific Performance," § 60.

Assessment roll, see "Municipal Corporations," § 483.

Bill before Legislature, see "Statutes," § 65.

Bill of lading, rights of bona fide holder, see "Carriers," § 59.

Bill or note, alteration as defense against bona fide purchaser, see "Bills and Notes," § 378.

Bill or note, effect on title of alteration of indorsement, see "Bills and Notes," § 201.

Certificate or transfer of corporate stock, see "Corporations," § 148.

Chattel mortgage, effect of alteration on rights of purchaser, see "Chattel Mortgages," § 208.

Collection of altered paper by bank, see "Banks and Banking," § 174.

Contract with school teacher, see "Schools and School Districts," § 135.

Criminal responsibility, see "Forgery," § 10.

Custom as to alteration of bills of lading, see "Customs and Usages," § 10.

Discharge of guarantor, see "Guaranty," § 54.

Discharge of surety, see "Principal and Surety," § 101.

Effect of failure to interpose defense on right to equitable relief, see "Judgment," § 429.

Effect of unnoted erasure in bid for public improvements, see "Municipal Corporations," § 332.

Election ballots, see "Elections," § 190.

Indictment, alteration as ground for arrest of judgment, see "Criminal Law," § 970.

Indictment or information, see "Indictment and Information," § 80.

Justice's records, see "Justices of the Peace," § 138.

Municipal ordinances, see "Municipal Corporations," § 122.

Notice of mining location, see "Mines and Minerals," § 19.

Of case or statement of facts, see "Appeal and Error," § 577.

Payment of altered paper by bank, see "Banks and Banking," §§ 147-149.

Process, see "Process," § 46.

Provisions of bill of lading as to alterations, see "Carriers," § 51.

Railroad ticket, condition in against alteration or mutilation, see "Carriers," § 254.

Railroad ticket, duty of carriers to accept after mutilation, see "Carriers," § 253.

Ratification of alteration by agent, see "Principal and Agent," § 166.

Records, see "Records," §§ 12, 22.

Submission to jury of special issues relating to alteration, on trial by court, see "Trial," § 370.

Wills, see "Wills," § 107.

Wills, alteration of as revocation, see "Wills," §§ 173-176.

**§ 1. Materiality.****§ 2.— Nature and extent of change in general.****§ 3.— Parties.***Cross-References.*

Filling blank with name of party, see post, § 7.

Signature of party, see post, § 8.

**§ 4.— Consideration.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 5.— Subject-matter.***Cross-References.*

Persons making alteration and intent, see post, § 11.

Date, time and place, see post, § 6.

Filling blanks in negotiable instruments, see post, § 7.

Signature and indorsement of negotiable instruments, see post, § 8.

(a) Writing the words "Protest waived" on a note before indorsement is a material alteration.—*Schwartz v. Wilmer*, 90 Md. 136, 44 Atl. 1059.

(b) After a deed assigning land for the separate use of a married woman had been executed and acknowledged, but, before being recorded, the husband of the assignee, without her knowledge, indorsed a condition thereon immediately under the acknowledgment. *Held*, that the indorsement, being a mere nullity, was not a material alteration.—*Cole v. Pennington*, 33 Md. 476. [Cited and annotated in 32 L. R. A. (N. S.) 291, on alteration of deed after delivery.]

**§ 6.— Place, time, and date.***Cross-Reference.*

Alteration as to place by filling blank, see post, § 7.

*Annotation.*

Alteration of commercial paper by inserting place of payment.—31 L. R. A. (N. S.) 643, note.

(a) A change of the date in a bill of lading constitutes a material alteration invalidating the bill.—*Merchants' Nat. Bank v. Baltimore, C. & R. Steamboat Co.*, 102 Md. 573, 63 Atl. 108.

(b) The alteration of the date in a guardian's bond, after its execution, from the "— day of December, 1823," to the "3d day of May, 1824," is an immaterial alteration, and does not affect the validity of the

bond, especially where it does not appear to have been made by the obligee.—*State v. Miller*, 3 Gill 335.

**§ 7.— Filling blanks.***Cross-References.*

Authority and intent, see post, § 11.

By consent, see post, § 12.

Filling blanks in deeds, see "Deeds," §§ 32, 39.

Necessity of reacknowledgment, see "Acknowledgment," § 7.

Right to fill blanks in contracts in general, see "Contracts," § 39.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 8.— Signatures and indorsements.***Cross-References.*

Alteration as to party and indorsement, see ante, § 3.

Evidence in prosecution by vice consul of claim against United States in court of claims, see "Courts," § 464.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 9.— Marginal matter and annexed writings.***Cross-Reference.*

Detachment and filling in blanks, see ante, § 7.

**§ 10. Time of alteration.***Annotation.*

Alteration of deed after delivery.—32 L. R. A. (N. S.) 284, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 11. Persons making alteration, and intent.***Cross-Reference.*

Effect upon rights of parties, see post, § 16.

(a) Erasures of the names of attesting witnesses to a deed, by a stranger, after its execution and delivery, will not avoid it.—*Wilkes v. Caulk*, 5 H. & J. 36. [Cited and annotated in 32 L. R. A. (N. S.) 285, on alteration of deed after delivery; in 39 L. R. A. (N. S.) 105, on presumption as to time of alteration in instrument and its effect on burden of proof.]

(b) A material alteration of a written instrument by a stranger, without authority, will not render the instrument inoperative.—*Wilkes v. Caulk*, 5 H. & J. 36. [Cited and annotated in 32 L. R. A. (N. S.) 285,

on alteration of deed after delivery; in 39 L. R. A. (N. S.) 105, on presumption as to time of alteration in instrument and its effect on burden of proof.]

## § 12. Authority or consent of parties.

(a) Defendant signed certain notes of \$50 each for C.'s accommodation, and gave them to him for delivery to the payee. C. afterwards, and before delivery, altered the notes by inserting the words "five hundred and" before the word "fifty." The body of the notes was entirely in the handwriting of C. *Held*, that as the notes were complete when they left the hands of the defendant, and C. was neither his agent nor employe, the fact that he had left a blank space sufficient to let in the words inserted did not imply an authority to fill them.—*Burrows v. Klunk*, 70 Md. 451, 17 Atl. 378, 14 Am. St. Rep. 371, 3 L. R. A. 576. [*Cited and annotated in 22 L. R. A. 686, on liability of maker or drawer on raised negotiable paper; in 35 L. R. A. 470, on effect of alteration of note on bona fide holders; in 21 L. R. A. (N. S.) 403, on duty to see spaces on commercial paper are filled so as to prevent raising.*]

(b) Any bona fide holder of a promissory note, with a blank left in it for the name of the payee, may fill in the blank with his own name.—*Boyd v. McCann*, 10 Md. 118.

## § 13. Ratification or waiver.

### Cross-References.

By principal of act of agent, see "Principal and Agent," § 166.

Suit by principal as ratification, see "Principal and Agent," § 171.

## § 14. Restoration of instrument.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 15. Effect upon rights of parties.

## § 16.—Written instruments in general.

(a) Where, in an instrument purporting to assign rents, a mistake is made in writing the Christian name of the lessor, the correction of such mistake by the assignor, with the consent of the assignee, after suit has been commenced by the latter for the rents, did not affect the validity of such instrument, especially as the instrument identified the lease by referring to the records where it was recorded.—*Outtoun v.*

*Dulin*, 72 Md. 536, 20 Atl. 134. [*Cited and annotated in 31 L. R. A. (N. S.) 127, on alteration of instruments: change in designation of party.*]

(b) When a party gives a written authority to draw a draft on him, "at ninety days from the 10th of April," an alteration of this date to the 16th of April, without his knowledge, will discharge him from liability as acceptor under such authority.—*Lewis v. Kramer*, 3 Md. 265.

(c) Any alteration of an instrument, however immaterial, if made by the party claiming the benefit thereof, avoids it so far as respects the remedy by action on it.—*Wickes v. Caulk*, 5 H. & J. 36. [*Cited and annotated in 32 L. R. A. (N. S.) 285, on alteration of deed after delivery; in 39 L. R. A. (N. S.) 105, on presumption as to time of alteration in instrument and its effect on burden of proof.*]

## § 17.—Conveyances.

(a) Where it was shown that a mortgage, at the time of its execution and delivery, was sealed, the subsequent detaching of the seal will not invalidate it.—*Van Riswick v. Goodhue*, 50 Md. 57.

(b) After a deed of assignment of real estate to the sole and separate use of a married woman had been executed and acknowledged, but before the same had been filed for record, the husband of the assignee, without her knowledge or sanction, indorsed a condition thereon, immediately under the acknowledgment. *Held*, that the indorsement being a nullity, the fact that the same had been recorded with the deed could not give it any validity.—*Cole v. Pennington*, 33 Md. 476. [*Cited and annotated in 32 L. R. A. (N. S.) 291, on alteration of deed after delivery.*]

## § 18.—Contracts in general.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 19.—Obligations under seal.

(a) The addition of the word "and," between the signatures of two parties to a sealed note, does not change their liabilities on it.—*Martin v. Good*, 14 Md. 398, 74 Am. Dec. 545.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

## § 20.—Negotiable instruments.

### *Cross-Reference.*

Effect on rights of bona fide purchasers, see "Bills and Notes," § 378.

### *Annotation.*

Effect on mortgage of alteration of note secured thereby.—16 L. R. A. 468; 41 L. R. A. (N. S.) 230, notes.

(a) A note is rendered void by an alteration of its date by the holder to the prejudice and without the consent of the maker.—*Mitchell v. Ringgold*, 3 H. & J. 159, 5 Am. Dec. 433. [*Cited and annotated* in 35 L. R. A. 465, on effect of alteration of note on bona fide holders; in 32 L. R. A. 516, on alteration of date of note.]

## § 21.—Official certificates and returns.

## § 22. Persons who may complain of alteration or question validity of instrument.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 23. Rights founded on original transaction or consideration.

(a) Where a joint note is executed, and at its maturity a partial payment made, and a new note given for the balance, which is invalid as to one of the makers because of a material alteration, a recovery can be had against such maker on the original cause of action.—*Owen v. Hall*, 70 Md. 97, 16 Atl. 376.

(b) Notes were given by defendant to plaintiff, but while in possession of plaintiff's wife, and without his knowledge, seals were affixed to them. *Held*, that the notes were avoided, but that the right of action on the original debt remained.—*Morrison v. Welty*, 18 Md. 169.

(c) The payee of a promissory note which is rendered void by a material alteration, made without fraudulent intent, may recover on the original consideration.—*Morrison v. Welty*, 18 Md. 169.

(d) If promissory notes are avoided, by reason of alteration, still the plaintiff will not be allowed to recover on the original indebtedness, without producing them at the trial for delivery to the defendant; the object being to protect defendant from future wrongful use of such instruments by plaintiff, which, though void, yet bear genuine

signatures, and might obtain credit.—*Morrison v. Welty*, 18 Md. 169.

## § 24. Admissibility of instrument in evidence.

### *Cross-References.*

Altered records, see "Evidence," § 366.

Mutilated account books, see "Evidence," § 354.

Burden of proof, see post, § 27.

(a) A memorandum by a clerk in the record of a deed that the date had been altered is no evidence of the fact, not being done with authority, and it will not invalidate the deed.—*Owings v. Norwood*, 2 H. & J. 96.

## § 25. Pleading.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 26. Evidence.

## § 27.—Presumptions and burden of proof.

### *Annotation.*

Presumption as to time of alteration in written instrument and its effect on burden of proof.—39 L. R. A. (N. S.) 100, note.

(a) Attesting witnesses to a deed not being necessary, when their names are erased, the party who wishes to avoid the deed must prove that the erasure was made after its execution and delivery by the grantee.—*Wickes v. Caulk*, 5 H. & J. 36. [*Cited and annotated* in 32 L. R. A. (N. S.) 285, on alteration of deed after delivery; in 39 L. R. A. (N. S.) 105, on presumption as to time of alteration in instrument and its effect on burden of proof.]

## § 28.—Admissibility in general.

(a) Where in an action on a note it was claimed that one of the co-makers signed as surety only, and that the note had been altered by the cashier of the bank to which it was payable, in that a notation thereon of the due date had been so changed as to extend the time of payment without the surety's consent, evidence of such fact was inadmissible as against the bank, in the absence of proof that the alteration was within the scope of the cashier's authority.—*Vanderford v. Farmers' & Mechanics' Nat. Bank of Westminster*, 105 Md. 164, 66 Atl. 47, 10 L. R. A. (N. S.) 129. [*Cited and annotated* in

23 L. R. A. (N. S.) 142, on renewal of principal's obligation as releasing party to collateral note; in 26 L. R. A. (N. S.) 99, on effect of extending time to principal to release surety apparently primarily liable.]

(b) A. drew a bill of exchange on B., which was indorsed by defendant in blank, and negotiated with D., who indorsed it specially to plaintiff. On presentation, acceptance was refused, after which it was returned by plaintiff to D., who erased his special indorsement and returned the bill to plaintiff, who sued defendant on his indorsement. *Held*, that parol evidence was admissible to show why and under what circumstances the erasure was made.—*Buckmyer v. Whiteford*, 6 Gill 1.

§ 29.—Weight and sufficiency.

§ 30. Questions for jury.

*Cross-References.*

See ante, § 24.

Submission to jury of special issues relating to alteration on trial by court, see "Trial," § 370.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## ALTERNATIVE ALLEGATIONS.

*Cross-References.*

See "Indictment and Information," § 72; "Pleading," § 20.

## ALTERNATIVE JUDGMENT.

*Cross-References.*

See "Judgment," § 228.

In replevin, see "Replevin," §§ 103, 107.

## ALTERNATIVE PLEADING.

*Cross-Reference.*

See "Pleading," § 20.

## ALTERNATIVE RELIEF.

*Cross-References.*

See "Cancellation of Instruments," § 57; "Equity," § 424; "Injunction," § 194; "Quieting Title," § 50; "Reformation of Instruments," § 47; "Replevin," §§ 103, 107; "Specific Performance," § 127.

## ALTERNATIVE SENTENCES.

*Cross-Reference.*

See "Criminal Law," §§ 991, 995.

## ALTERNATIVE WRIT.

*Cross-References.*

See "Mandamus," §§ 159-161; "Prohibition," § 23.

*Annotation.*

1 Words and Phrases, 366.

# AMBASSADORS AND CONSULS.

## Scope-Note.

[INCLUDES diplomatic and consular officers and agents; their appointment, qualification, recognition, tenure, and recall; and their rights, privileges, powers, duties, and liabilities.]

[EXCLUDES negotiation and ratification of treaties (see "*Treaties*"). For complete list of matters excluded, see cross-references, post.]

## Analysis.

- § 1. Appointment, qualification, and tenure.
- § 2. Compensation.
- § 3. Privileges, immunities, and disabilities.
- § 4. Powers and duties of public ministers.
- § 5. Powers, duties, and liabilities of consular officers.
- § 6. Consular courts.
- § 7. Consular fees.
- § 8. Actions.

## Cross-References.

Appointment as administrator, see "Executors and Administrators," § 24.

Certification of authority of officer taking acknowledgment, see "Acknowledgment," § 39.

Confidential or privileged character of documents, see "Witnesses," § 184.

Jurisdiction of criminal prosecutions against, see "Criminal Law," § 95.

Jurisdiction of suits against consuls, see "Courts," § 518.

Payment of share of alien distributee of decedent's estate, see "Executors and Administrators," § 303.

Process, making affidavit of service before consular agent, see "Process," § 137.

Taking affidavits, see "Affidavits," § 14.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

- § 1. Appointment, qualification, and tenure.  
 § 2. Compensation.  
 § 3. Privileges, immunities, and disabilities.

*Annotation.*

Exemptions and privileges of consuls.—45 L. R. A. 579, note.

- § 4. Powers and duties of public ministers.  
 § 5. Powers, duties, and liabilities of consular officers.

*Annotation.*

Powers of consul in other matters.—45 L. R. A. 496, note.

Jurisdiction in criminal cases.—45 L. R. A. 481, note.

Jurisdiction in civil cases.—45 L. R. A. 486, note.

- § 6. Consular courts.  
 § 7. Consular fees.  
 § 8. Actions.

*Cross-References.*

Jurisdiction of courts, see "Courts," § 518; "Criminal Law," § 95.

Operation and effect of default judgment, see "Judgment," § 111.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### AMBIGUITIES.

*Cross-References.*

In allegations of pleading, see "Equity," § 144; "Pleading," § 19.

In contract waiving mechanic's lien, see "Mechanics' Liens," § 207.

In language of statutes, see "Statutes," §§ 181-186, 190.

In language of wills, see "Wills," § 488.

Parol or extrinsic evidence to construe ambiguous instruments, see "Evidence," §§ 448-463.

*Annotation.*

1 Words and Phrases, 367.

### AMENDMENT.

*Cross-References.*

After change of venue, see "Venue," § 80.  
 Change of character or form of action, see "Action," § 36.

Effect of appeal or other proceeding for review, see "Appeal and Error," § 440.  
 Necessity of new process after amendment of pleading, see "Process," § 6.

Review of discretion of court, see "Appeal and Error," §§ 958, 959.

*In particular remedies or special jurisdictions.*

See "Attachment," §§ 122, 136, 154, 324; "Contempt," § 54; "Depositions," § 39; "Equity," §§ 265-277, 279-285, 288-291, 293; "Execution," §§ 97, 338, 426; "Gar-

nishment," §§ 97, 103; "Habeas Corpus," §§ 56, 80; "New Trial," § 152; "Reference," §§ 58, 92, 97; "Removal of Causes," §§ 94, 107; "Replevin," §§ 32, 38.

Admiralty, see "Admiralty."

Appeal or error, see "Appeal and Error," §§ 886-889, 896; "Criminal Law," § 1138; "Justices of the Peace," § 174.

In justices' court, see "Justices of the Peace," § 96.

In lower court after remand by appellate court, see "Appeal and Error," § 1199.

In proceedings on new trial, see "New Trial," § 171.

*Of particular acts, instruments, or proceedings.*

See "Depositions," § 81; "Indictment and Information," §§ 155-163; "Judgment," §§ 294-335; "Parties," §§ 36-65, 95; "Process," §§ 162-165; "Records," § 10; "Statutes," §§ 129-148.

Abstract of record on appeal, see "Appeal and Error," § 590.

Abstract or record on appeal or error as affecting costs, see "Costs," § 257.

Affidavit for appeal in justice's court, see "Justices of the Peace," § 157.

Affidavit for change of venue, see "Justices of the Peace," § 73.

Affidavit for writ of ne exeat, see "Ne Exeat," § 7.

Affidavit in attachment, see "Justices of the Peace," § 86.

Affidavit in garnishment proceedings, see "Garnishment," § 87.

Affidavits for arrest, see "Arrest," § 31.

Affidavits for attachment, see "Attachment," § 122.

Affidavits in replevin, see "Replevin," § 32.

Appeal bond, see "Criminal Law," § 1076.

Application and affidavits for continuance, see "Criminal Law," § 603.

Application for license, see "Intoxicating Liquors," § 64.

Application for patent, see "Patents," § 109.

Appraisal or inventory of estate of decedent, see "Executors and Administrators," §§ 70, 71.

Articles of incorporation, see "Corporations," § 40.

Assessment for public improvements, see "Municipal Corporations," § 492.

Assessment rolls, see "Taxation," § 438.

Assessments, see "Taxation," §§ 360, 361, 404, 405, 451-500.

Assignment of errors, see "Appeal and Error," § 748.

Award of arbitrators, see "Arbitration and Award," § 69.

Bill of costs, see "Costs," § 213.

Bill of exceptions, see "Exceptions, Bill of," § 59.

Bill of exceptions, case, or statement of facts on motion for new trial, see "New Trial," § 131.

Bill of review, see "Equity," § 430.

Bond for attachment, see "Attachment," § 136.

*Cross-References, Continued.*

Bond on appeal from justice's court, see "Justices of the Peace," § 159.  
 Bond or undertaking in attachment, see "Justices of the Peace," § 86.  
 Bond or undertaking on appeal or writ of error, see "Appeal and Error," § 390.  
 Briefs, see "Appeal and Error," § 766.  
 By-laws of corporations in general, see "Corporations," § 56.  
 By-laws of mutual benefit insurance associations, see "Insurance," § 719.  
 Capias, see "Arrest," § 33.  
 Certificate of acknowledgment, see "Acknowledgment," § 42.  
 Certificate of consent by board of town auditors to additional levy for highway purposes, see "Highways," § 127.  
 Certificate of highway commissioners as to necessity for additional highway tax levy, see "Highways," § 127.  
 Certificate of highway tax levy, see "Highways," § 127.  
 Certificate of levy of school tax, see "Schools and School Districts," § 103.  
 Certificate of levy of town taxes, see "Towns," § 56.  
 Certificate of location of mining claim, see "Mines and Minerals," § 21.  
 Certificate of publication of delinquent tax list, see "Taxation," § 630.  
 Certificates of nomination or nomination papers, see "Elections," § 155.  
 Certificate transferring prosecution to other court, see "Criminal Law," § 101.  
 Claim of patent, see "Patents," § 168.  
 Claim or statement of mechanic's lien, see "Mechanics' Liens," § 158.  
 Commission to take deposition, see "Depositions," § 39.  
 Complaint for violation of municipal ordinance, see "Municipal Corporations," § 639.  
 Complaint in action for unlawful detainer, see "Landlord and Tenant," § 291.  
 Conclusions of law, see "Trial," § 400.  
 Constitution, see "Constitutional Law," §§ 5-9.  
 Corporate charter, see "Corporations," § 38; "Railroads," § 19; "Street Railroads," § 19; "Turnpikes and Toll Roads," § 11.  
 Corporation laws, see "Corporations," § 39.  
 Court records in general, see "Courts," §§ 114, 116.  
 Decree in admiralty, see "Admiralty," § 93.  
 Decree in equity, see "Equity," § 429.  
 Deed, by subsequent instrument, see "Deeds," § 43.  
 Deed to purchaser at execution sale, see "Execution," § 316.  
 Deed to purchaser on mortgage foreclosure sale, see "Mortgages," § 554.  
 Deficiency judgment on foreclosure, see "Mortgages," § 559.  
 Election returns, see "Elections," § 254.  
 Entry on tax execution, see "Taxation," § 651.  
 Exceptions to report of referee, see "Reference," § 100.

Execution in justice's court, see "Justices of the Peace," § 135.  
 Findings of court, see "Trial," § 400.  
 Findings of referee, see "Reference," § 92.  
 Government survey, see "Public Lands," § 26.  
 Indictment or information ground for new trial, see "Criminal Law," § 936.  
 Indorsement of commitment, see "Criminal Law," § 999.  
 In forma pauperis on appeal or other proceeding for review, see "Appeal and Error," § 389.  
 Information for removal of clerk, see "Clerks of Courts," § 8.  
 Inquisition on writ of inquiry for assessment of damages on default, see "Damages," § 198.  
 Instructions, see "Criminal Law," § 818; "Trial," § 267.  
 Intermediate accounting by executor or administrator, see "Executors and Administrators," § 509.  
 Interrogatories to jury, see "Trial," § 353.  
 Irregularities and errors at trial, see "Criminal Law," §§ 895-904; "Trial," §§ 406-427.  
 Judgment in municipal courts, see "Courts," § 189.  
 Judgment in proceedings to support attachment, see "Attachment," § 217.  
 Judgment in summary trials, see "Criminal Law," § 258.  
 Judgment of appellate court, see "Appeal and Error," §§ 1185, 1221.  
 Judgment of foreclosure, see "Mortgages," § 495.  
 Judgment of justice of the peace, see "Justices of the Peace," § 126.  
 Judgment or order in highway proceedings, see "Highways," § 53.  
 Judgment or order of lower court on appeal, see "Appeal and Error," § 1149.  
 Judgment reviving judgment, see "Judgment," § 868.  
 Legislative bills, see "Statutes," § 16.  
 License or certificate, see "Intoxicating Liquors," § 78.  
 Lien for municipal assessment, see "Municipal Corporations," § 519.  
 Mandate or remittitur from appellate court, see "Appeal and Error," § 1222.  
 Master's report, see "Equity," § 411.  
 Minutes and records of city council, see "Municipal Corporations," § 100.  
 Minutes and records of county board, see "Counties," § 53.  
 Motion for new trial, see "Criminal Law," § 949; "New Trial," § 152.  
 Municipal charters, see "Municipal Corporations," §§ 44-46.  
 Municipal ordinances or by-laws in general, see "Municipal Corporations," § 114.  
 Naturalization certificate, see "Aliens," § 69.  
 Notice and proof of loss under insurance policy, see "Insurance," § 551.  
 Notice of appeal, see "Appeal and Error," § 422.  
 Notice of appeal from justice's court, see "Justices of the Peace," § 160.



*Cross-References, Continued.*

- Notice of claim for injuries from defect in street, see "Municipal Corporations," § 812.
- Notice of lis pendens, see "Lis Pendens," § 19.
- Notice of mechanic's lien claim, see "Mechanics' Liens," § 124.
- Objections in proceedings for judgment against land assessed for taxation, see "Taxation," § 643.
- Objections to confirmation of municipal assessment, see "Municipal Corporations," § 501.
- Order of reference, see "Reference," § 30.
- Order of sale on foreclosure of mortgage, see "Mortgages," § 502.
- Order opening default judgment, see "Judgment," § 173.
- Order refusing to amend judgment, see "Judgment," § 328.
- Orders in general, see "Motions," § 58.
- Ordinance, resolution or order for public improvement, see "Municipal Corporations," § 311.
- Parties in justices' courts, see "Justices of the Peace," § 77.
- Parties on appeal, see "Appeal and Error," § 336.
- Petition, affidavit, or other application on appeal, see "Appeal and Error," §§ 361, 362.
- Petition for appointment of guardian ad litem, see "Infants," § 80.
- Petition for drain, see "Drains," § 28.
- Petition for improvement of highway, see "Highways," § 107.
- Petition for incorporation of borough, see "Municipal Corporations," § 12.
- Petition for order of sale of decedent's real estate, see "Executors and Administrators," § 336.
- Petition for writ of habeas corpus, see "Habeas Corpus," § 56.
- Petition in insolvency, see "Insolvency," § 32.
- Petition in involuntary bankruptcy proceedings, see "Bankruptcy," § 84.
- Pleadings, see "Equity," §§ 265-293; "New Trial," § 171; "Pleadings," §§ 229-286.
- Pleadings, ground for new trial, see "New Trial," § 83.
- Pleadings in action for forcible entry and detainer, see "Forcible Entry and Detainer," § 27.
- Pleadings in action or scire facias on bail bond, see "Bail," § 33.
- Pleadings in actions on bills or notes, see "Bills and Notes," § 487.
- Pleadings in actions to redeem from mortgage foreclosure, see "Mortgages," § 616.
- Pleadings in ejectment by purchaser at foreclosure sale, see "Mortgages," § 544.
- Pleadings in justices' courts, see "Justices of the Peace," § 96.
- Preliminary complaint or affidavit in criminal prosecution, see "Criminal Law," § 214.
- Preliminary statements in interferences in patent office, see "Patents," § 106.
- Preliminary warrant or other process in criminal prosecution, see "Criminal Law," § 220.
- Proceedings for allotment of widow's allowance, see "Executors and Administrators," § 193.
- Process in actions of forcible entry and detainer, see "Forcible Entry and Detainer," § 19.
- Process in foreclosure proceedings, see "Mortgages," § 440.
- Process in justice's court, see "Justices of the Peace," § 83.
- Proposed bill of exceptions, see "Exceptions, Bill of," § 47.
- Proof of claims against bankrupt's estate, see "Bankruptcy," § 336.
- Proof of notice of public improvements, see "Municipal Corporations," § 294.
- Proof of publication of notice of tax sale, see "Taxation," § 662.
- Proposed case or statement on appeal, see "Appeal and Error," § 566.
- Record in criminal prosecution, see "Criminal Law," § 996.
- Record of highway commissioners showing amount to be levied for highway purposes, see "Highways," § 127.
- Record of indictment, see "Indictment and Information," § 11.
- Record of return of executions, see "Execution," § 337.
- Record on appeal from justice's court, see "Justices of the Peace," § 164.
- Record on appeal or writ of error, see "Appeal and Error," §§ 643-646, 648-651, 653-657; "Criminal Law," § 1110.
- Record or docket of justice, see "Justices of the Peace," § 138.
- Records of town meetings, see "Towns," § 24.
- Replevin bonds, see "Replevin," § 33.
- Report of referee, see "Reference," § 97.
- Return and record of tax sales, see "Taxation," § 684.
- Return of attachment, see "Attachment," § 324.
- Return of execution, see "Execution," § 338.
- Return of writ of venire to summon jurors, see "Grand Jury," § 9; "Jury," §§ 68, 70.
- Return on foreclosure sale, see "Mortgages," § 525.
- Return on notice of nonpayment of interest on public land certificate, see "Public Lands," § 54.
- Return or record in certiorari, see "Certiorari," § 55; "Justices of the Peace," § 205.
- Return to writ of habeas corpus, see "Habeas Corpus," § 80.
- Rules of court, see "Courts," § 82.
- Sale of land for nonpayment of taxes, see "Taxation," § 734.
- Schedule in bankruptcy proceedings, see "Bankruptcy," § 32.
- Special tax bills, see "Municipal Corporations," § 485.
- Specifications in opposition to bankrupt's discharge, see "Bankruptcy," § 413.

*Cross-References, Continued.*

Statement of entry on town site, see "Public Lands," § 39.  
 Statement or agreed case, see "Submission of Controversy," § 12.  
 Submission to arbitration, see "Arbitration and Award," § 15.  
 Summons charging violation of municipal ordinance, see "Municipal Corporations," § 637.  
 Summons or notice to defendant in garnishment proceedings, see "Garnishment," § 103.  
 Survey of state lands, see "Public Lands," § 167.  
 Tax deeds, see "Taxation," § 769.  
 Town records, see "Towns," § 56.  
 Transcript on appeal in summary prosecutions, see "Criminal Law," § 260.  
 Verdict or findings, see "Criminal Law," §§ 888-890; "Trial," §§ 338-340, 362.  
 Verdict or findings in ejectment, see "Ejectment," § 111.  
 Verification of pleading, see "Pleading," § 303.  
 Warrant in prosecution for failure to work on highway, see "Highways," § 151.  
 Warrant in summary proceedings to recover possession of property, see "Forcible Entry and Detainer," § 21.  
 Writ of audita querela, see "Audita Querela," § 5.  
 Writ of entry, see "Entry, Writ of," § 12.  
 Writ of error, see "Appeal and Error," § 403; "Criminal Law," § 1080.

Writ of execution, see "Execution," §§ 97, 436.  
 Writ of replevin, see "Replevin," § 38.  
 Writ of scire facias to revive judgment, see "Judgment," § 870.  
 Writ or summons of garnishment, see "Garnishment," § 97.  
 Writ or warrant for arrest in civil cases, see "Arrest," § 33.  
 Writ or warrant of attachment, see "Attachment," § 154.

*Annotation.*

1 Words and Phrases, 368-370.

**AMERCEMENT.***Cross-Reference.*

Of sheriff or constable, see "Sheriffs and Constables," § 125.

*Annotation.*

1 Words and Phrases, 371.

**AMICABLE ACTION.***Cross-Reference.*

See "Submission of Controversy."

*Annotation.*

1 Words and Phrases, 372.

**AMICABLE COMPOUNDERS.***Cross-Reference.*

See "Arbitration and Award," §§ 26, 28, 31.

**AMICUS CURIAE.***Scope-Note.*

[INCLUDES persons, whether attorneys or laymen, who interpose in a judicial proceeding to assist the court by giving information or otherwise, or who conduct an investigation or other proceeding on request or appointment therefor by the court; their rights, powers, duties, and liabilities.

[EXCLUDES assignment of attorneys by the court as counsel (see "Attorney and Client"). For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Right to appear and act in general.
- § 2. Compensation.
- § 3. Powers, functions, and proceedings.

*Cross-References.*

Assignment of attorneys by the court as counsel, see "Attorney and Client," § 132.

Conclusiveness of judgment as to one appearing as amicus curiae, see "Judgment," § 675.

**§ 1. Right to appear and act in general.***Annotation.*

Right of court to surcharge account of executor, administrator, guardian or receiver on objection by.—18 L. R. A. (N. S.) 284.

**§ 2. Compensation.****§ 3. Powers, functions, and proceedings.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

**AMNESTY.***Cross-Reference.*

See "Pardon," § 11.

*Annotation.*

1 Words and Phrases, 373.

**AMOUNT IN CONTROVERSY.***Cross-References.*

As affecting award of costs, see "Costs," §§ 20, 22-25.

As affecting right to trial by jury, see "Jury," § 15.

Jurisdictional amount, see "Appeal and Error," §§ 45-65; "Courts," §§ 120-122, 168-170, 212, 213, 219, 220, 222, 224, 231, 236, 237, 240, 242, 247, 250, 251, 326-330; "Criminal Law," § 1020; "Equity," § 33; "Justices of the Peace," §§ 42-44, 141, 145; "Removal of Causes," §§ 71-76.

Review of questions of jurisdiction, see "Appeal and Error," § 185.

*Annotation.*

1 Words and Phrases, 376, 377.

**AMOUNT OF RECOVERY.***Cross-Reference.*

Affecting allowance additional to costs, see "Costs," § 164.

**AMUSEMENTS.***Cross-References.*

See "Theaters and Shows."

As nuisance, see "Nuisance," § 3.

Carrying weapons at places of amusement, see "Weapons," § 9.

On Sunday, see "Sunday," § 6.

*Annotation.*

1 Words and Phrases, 378, 379.

**ANALYSIS.***Cross-Reference.*

Of food in prosecution for violation of food laws, see "Food," § 19.

*Annotation.*

1 Words and Phrases, 379.

**ANARCHISTS.***Cross-References.*

Exclusion acts as violation of personal, civil, and political rights, see "Constitutional Law," § 82.

Exclusion of alien anarchists, see "Aliens," § 18.

Freedom of speech and of the press, see "Constitutional Law," § 90.

Publication of anarchistic doctrines, see "Criminal Law," §§ 26, 45.

*Annotation.*

1 Words and Phrases, 379, 380.

**ANCESTORS.***Cross-Reference.*

Right of inheritance, see "Descent and Distribution," § 36.

*Annotation.*

1 Words and Phrases, 380-382.

**ANCHOR.***Cross-References.*

Collision with vessel at anchor, see "Collision," § 69.

Injuries to anchored tow, see "Towage," § 11.

*Annotation.*

1 Words and Phrases, 382.

**ANCIENT DOCUMENTS.***Cross-Reference.*

Use of as evidence, see "Evidence," § 372.

*Annotation.*

1 Words and Phrases, 383.

**ANCIENT LIGHTS.***Cross-References.*

See "Easements," § 11; "Adjoining Landowners," § 10.

Adoption of English statute, see "Common Law," § 12.

Establishment of right to light, air, and view by implication, see "Easements," § 19; "Adjoining Landowners," § 10.

*Annotation.*

1 Words and Phrases, 383.

**ANCILLARY ACTION.***Cross-References.*

Necessity of process, see "Equity," §§ 119, 121.

Parties, see "Equity," § 113.

Removal to federal court, see "Removal of Causes," § 5.

Venue, see "Venue," § 15.

**ANCILLARY ADMINISTRATION.***Cross-Reference.*

See "Executors and Administrators," §§ 517-526.

*Annotation.*

1 Words and Phrases, 384.

**ANCILLARY GUARDIANSHIP.***Cross-References.*

See "Guardian and Ward," §§ 166-172; "Insane Persons," § 43.

**ANCILLARY JURISDICTION.***Cross-References.*

In administration of bankrupt's estate, see "Bankruptcy," §§ 292-296.

Of appellate courts, see "Courts," § 205.

Of courts in general, see "Courts," § 27.

Of courts of equity, see "Equity," § 35.

Of federal courts, see "Courts," § 264.

Of justices of the peace, see "Justices of the Peace," § 51.

Of probate courts, see "Courts," § 201.

**ANCILLARY PROCEEDINGS.***Cross-References.*

Certiorari in aid of writ of habeas corpus, see "Habeas Corpus," § 66.

To bring up record on appeal, see "Appeal and Error," §§ 658-661.

**ANCILLARY RECEIVERSHIP.***Cross-References.*

See "Receivers," § 206.  
 Of corporations in general, see "Corporations," § 686.  
 Of railroad companies, see "Railroads," § 213.

**ANGUISH.***Cross-References.*

Element of damages, see "Damages," §§ 48-56, 89; "Telegraphs and Telephones," § 68.

*Annotation.*

1 Words and Phrases, 396.

**ANIMALS.***Scope-Note.*

[INCLUDES animals the subjects of property or of legal protection or regulation, other than game and fish; nature and incidents of rights of property in animals, and liabilities for injuries by them; regulations for their protection from disease, ill treatment, etc., and relating to estrays; contracts for feeding, care, and use or hire; and the offense of cruelty to animals.

[EXCLUDES rights of taking and protection of game (see "Game"); conveyances and contracts relating to animals (see "Sales"; "Chattel Mortgages"; "Bailment"; "Livery Stable Keepers"; "Carriers"; "Insurance"; and other specific heads); fence laws (see "Fences"); liabilities for injuries to animals (see "Negligence"; "Railroads"; "Highways"); and malicious injury as an offense (see "Malicious Mischief"). For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Nature of property.
- § 2. Animals subjects of ownership.
- § 3. Evidence of ownership in general.
- § 4. Licenses.
- § 5. Marks and brands.
- § 6. — Adoption and use in general.
- § 7. — Statutory regulations.
- § 8. — Recording.
- § 9. — Transfer.
- § 10. — Evidence of ownership.
- § 11. — Destroying or altering.
- § 12. — False marking or branding.
- § 13. — Criminal prosecutions.
- § 14. Driving from range or pasture.
- § 15. Regulations of slaughtering.
- § 16. Breeding.
- § 17. — Statutory regulations.
- § 18. — Contracts.
- § 19. — Lien.
- § 20. — Right to offspring.
- § 21. Agistment, keeping, and care.
- § 22. — Rights and duties in general.
- § 23. — Loss of or injuries to animals.
- § 24. — Injuries by animals.
- § 25. — Compensation.
- § 26. — Lien.

- § 27. Hire and use.
- § 28. Contagious and infectious diseases.
- § 29. — Statutory regulations in general.
- § 30. — Quarantine.
- § 31. — Restrictions upon transportation.
- § 32. — Destruction of diseased animals.
- § 33. — Liabilities for communication of diseases.
- § 34. — Offenses.
- § 35. — Penalties for violations of regulations.
- § 36. — Criminal prosecutions.
- § 37. Cruelty.
- § 38. — Statutory regulations.
- § 39. — Societies for prevention.
- § 40. — Offenses.
- § 41. — Penalties for violations of regulations.
- § 42. — Criminal prosecutions.
- § 43. — Injuring or killing animals in general.
- § 44. — Civil liability.
- § 45. — Criminal responsibility.
- § 46. Conversion.
- § 47. Running at large.
- § 48. — Rights and duties of owners.
- § 49. — Statutory regulations in general.
- § 50. — Stock laws.
- § 51. — Impounding animals at large.
- § 52. — Killing or injuring animals at large.
- § 53. — Injuries by animals at large.
- § 54. — Persons liable for injuries.
- § 55. — Actions.
- § 56. — Penalties for violations of regulations.
- § 57. — Criminal prosecutions.
- § 58. Estrays.
- § 59. — Rights of owners.
- § 60. — Statutory regulations.
- § 61. — Impounding or taking up.
- § 62. — Injuries by stray animals.
- § 63. — Actions and other proceedings for damages.
- § 64. — Penalties for violations of regulations.
- § 65. — Criminal prosecutions.
- § 66. Personal injuries.
- § 66½. — Duties of owners in general.
- § 67. — Domestic animals in general.
- § 68. — Dogs.
- § 69. — Wild animals.
- § 70. — Knowledge or notice of vicious propensities.
- § 71. — Contributory negligence.
- § 72. — Persons liable for injuries.
- § 73. — Killing vicious animals.
- § 74. — Actions.

- § 75. — Penalties for violations of regulations.
- § 76. — Criminal prosecutions.
- § 77. Injuries to other animals.
- § 78. — Duties of owners in general.
- § 79. — Statutory regulations.
- § 80. — Domestic animals in general.
- § 81. — Dogs.
- § 82. — Knowledge or notice of vicious propensities.
- § 83. — Persons liable for injuries.
- § 84. — Killing vicious animals.
- § 85. — Actions.
- § 86. — Penalties for violations of regulations.
- § 87. — Criminal prosecutions.
- § 88. — Liabilities of municipalities.
- § 89. Trespassing.
- § 90. — Duties of owners.
- § 91. — Statutory regulations in general.
- § 92. — Fencing and fence laws.
- § 93. — What constitutes a trespass.
- § 94. — Driving off trespassing animals.
- § 95. — Impounding or distraining trespassing animals, and lien for damages.
- § 96. — Injuring or killing trespassing animals.
- § 97. — Liabilities for trespasses in general.
- § 98. — Effect of defects in fences.
- § 99. — Persons liable for injuries.
- § 100. — Actions and other proceedings for damages.
- § 101. — Penalties for violations of regulations.
- § 102. — Criminal prosecutions.
- § 103. Pounds.
- § 104. — Establishment and maintenance.
- § 105. — Pound keepers.
- § 106. — Sale of impounded animals.
- § 107. — Redemption of impounded animals.
- § 108. — Offenses.
- § 109. — Penalties.
- § 110. — Criminal prosecutions.

#### *Cross-References.*

See "Fish"; "Game."

Amendment of statutes relating to animals, see "Statutes," § 141.

Animals causing wreck of train, liability of owner, see "Railroads," § 291.

As subject of larceny, see "Larceny," §§ 5-10.

Bounties for destruction of wild animals, see "Bounties," § 8.

Carriage of live stock, see "Carriers," §§ 203-232; "Shipping," § 109.

Collisions of street cars with animals, see "Street Railroads," § 90.

Competency of evidence as to trailing by bloodhounds, see "Criminal Law," § 386.

Constitutionality of act prohibiting use of unregistered docked horses, see "Constitutional Law," § 87.

Constitutionality of fence and stock laws, deprivation of property without due process of law, see "Constitutional Law," § 294.

Constitutionality of statute, delegation of legislative power, see "Constitutional Law," §§ 63, 65.

Constitutionality of statute delegating power to kill unlicensed dogs, see "Constitutional Law," § 64.

Constitutionality of statute depriving owner of animal of right to recover damages for

- wrongful seizure, see "Constitutional Law," § 322.
- Constitutionality of statute, discrimination as to localities, see "Constitutional Law," § 225.
- Constitutionality of statute, effect of constitution on pre-existing laws, see "Constitutional Law," § 24.
- Constitutionality of statute, exempting certain localities from operation of stock laws as taking property without compensation, see "Eminent Domain," §§ 2, 17.
- Constitutionality of statute, general or special legislation, see "Statutes," § 77.
- Constitutionality of statute, impounding animals as deprivation of property without due process of law, see "Constitutional Law," § 306.
- Constitutionality of statute, interference with commerce, see "Commerce," § 52.
- Constitutionality of statute, regulating importation of animals as denial of equal privileges of citizens of the several states, see "Constitutional Law," § 207.
- Constitutionality of statute, regulating importation or transportation of animals as regulation of commerce, see "Commerce," § 35.
- Constitutionality of statute, regulating keeping and use of animals as denial of equal protection of laws, see "Constitutional Law," § 237.
- Constitutionality of statute, regulating keeping and use of animals as deprivation of property without due process of law, see "Constitutional Law," § 293.
- Constitutionality of statute relating to animals, denial of equal protection of laws, see "Constitutional Law," § 225.
- Constitutionality of statute, subjects and titles of acts, see "Statutes," § 120.
- Constitutionality of statute, taking private property without just compensation, see "Eminent Domain," § 2.
- Constitutionality of statute, vested rights, see "Constitutional Law," § 106.
- Danger of injury to animals as element of compensation for property injured by construction and operation of railroad, see "Eminent Domain," § 110.
- Driving sheep into state, defense to prosecution, see "Criminal Law," § 31.
- Driving sheep into state, indictment in language of statute, see "Indictment and Information," § 110.
- Effect of fence and stock laws on care required in operation of trains as to animals on track, see "Railroads," § 406.
- Ejection of passenger for refusal to remove dog from train, see "Carriers," § 359.
- Embezzlement of, see "Embezzlement," §§ 44, 52.
- Evidence of value or market price, see "Evidence," § 113.
- Exemption of domestic animals from legal process, see "Exemptions," § 43.
- Fence laws, see "Fences."
- Frightening animals at railroad crossings as cause of personal injuries, see "Railroads," § 305.
- Frightening animals in street, see "Municipal Corporations," § 781.
- Frightening animals near railroad tracks, see "Railroads," § 407.
- Frightening animals near railroad tracks as cause of personal injuries, see "Railroads," § 360.
- Frightening animals near street railroad tracks, see "Street Railroads," § 87.
- Frightening of animals in city street as cause of injuries, see "Municipal Corporations," § 705.
- Frightening of horse by fireworks, as cause of injury, see "Explosives," § 11.
- Fright of animals as proximate cause of injury, see "Negligence," § 62.
- Increase of animals as community or separate property, see "Husband and Wife," § 257.
- Increase of animals, liability of tenant for, see "Landlord and Tenant," § 136.
- Inducing purchase of, by false pretenses, see "False Pretenses," § 30.
- Injuries to animals from defects in premises owned or controlled by defendant, see "Negligence," §§ 28-55.
- Injuries to animals from operation of railroads, see "Railroads," §§ 405-452.
- Injuries to animals on street railroad tracks, see "Street Railroads," § 90.
- Injuries to passenger from collision of train with animals, see "Carriers," § 316.
- Injuries to persons on city streets by animals not under control or running away, see "Municipal Corporations," § 705.
- Injuries to servant caused by ferocious animal, see "Master and Servant," § 217.
- Injuries to servant caused by vicious horse, see "Master and Servant," § 109.
- Judicial notice of phenomena of animal life, see "Evidence," § 13.
- Judicial notice of rules relating to transportation of, see "Criminal Law," § 304.
- Keeping as nuisance, see "Nuisance," § 3.
- Legislative control of municipal acts relating to animals, see "Municipal Corporations," § 78.
- Liability of innkeeper for loss of or injury to horses of guest, see "Innkeepers," § 11.
- Liability of owner of animal for acts of person employed to drive it, see "Master and Servant," § 316.
- Liability of railroad company for stock-law tax, see "Taxation," § 144.
- Malicious prosecution of person taking up animals, see "Malicious Prosecution," § 72.
- Mandamus to compel enactment of ordinances to prevent animals from running at large, see "Mandamus," § 99.
- Mandamus to compel establishment of stock law district, see "Mandamus," §§ 3, 99.
- Mortgage of animals and increase, see "Chattel Mortgages," §§ 13, 118.
- Mortgage of, description in instrument, see "Chattel Mortgages," § 49.
- Municipal regulations as to keeping and use of animals, see "Municipal Corporations," § 604.
- Obtaining by false pretenses, see "False Pretenses," §§ 32, 49, 52, 54.
- Opinion evidence as to bodily appearance or condition, see "Criminal Law," §§ 448, 452; "Evidence," § 477.
- Place of taxation, see "Taxation," § 261.

Power of city to regulate removal of dead animals, see "Municipal Corporations," § 608.  
 Regulations as to pasturing of cattle in Indian country, see "Indians," § 33.  
 Rules of carrier as to dogs accompanying passengers, see "Carriers," § 267.  
 Stabling and hiring of horses, see "Livery Stable Keepers."  
 Subject to execution, see "Execution," § 20.

## § 1. Nature of property.

### *Cross-References.*

Affecting power of city to regulate removal of bodies of dead animals, see "Municipal Corporations," § 608.  
 Private right of taking game as conferring property in wild animals, see "Game," § 3.

(a) An ordinance providing for the impounding of all dogs running at large in a city, for the notification to owners whose names are engraved on the dogs' collars, and for the killing of dogs not redeemed by the payment of one dollar within 24 hours after such impounding, is not unconstitutional, nor so unreasonable as that it should be declared void, as there can be but a qualified property in dogs.—*City of Hagerstown v. Witmer*, 86 Md. 293, 37 Atl. 965, 39 L. R. A. 649. [*Cited and annotated in* 38 L. R. A. 161, on municipal power over buildings and other structures as nuisances; in 38 L. R. A. 640, on municipal power over nuisances relating to trade or business; in 39 L. R. A. 520, on municipal power as to nuisances affecting public morals, decency, peace, and good order; in 39 L. R. A. 551, on municipal control over smoke as public nuisance; in 39 L. R. A. 609, on municipal control over railroads and electrical companies as nuisances on street; in 40 L. R. A. 465, on injunction by municipalities against nuisances in waters and water courses; in 40 L. R. A. 510, on property rights in dogs; in 41 L. R. A. 325, on injunctions by municipalities against nuisances affecting public morals, good order, health and safety; in 42 L. R. A. 814, 821, 825, on injunctions by municipalities against nuisances on highways and streets; in 53 L. R. A. 900, on prescriptive right to maintain public nuisance; in 21 L. R. A. (N. S.) 700, on validity of statute permitting summary killing of domestic animals at large, other than dogs; in 22 L. R. A. 1098, on civil lia-

bility of non-resident for damage by stock straying in district where running at large is forbidden.]  
 Trespass by animals on Indian lands, see "Indians," § 19.  
 Trespass for injury resulting from frightening horses, see "Trespass," § 1.  
 Vicious propensities of animals driven or led in street, see "Municipal Corporations," § 705.  
 Wild animals injurious to crops, see "Agriculture," § 9.

## § 2. Animals subjects of ownership.

### *Cross-References.*

See post, § 44.  
 Subjects of larceny, see "Larceny," §§ 5, 7.

### *Annotation.*

Property rights in dogs.—40 L. R. A. 503, note.

## § 3. Evidence of ownership in general.

### *Cross-Reference.*

Marks and brands, see post, § 10.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 4. Licenses.

### *Cross-References.*

Construction of delegational power of county to impose license tax, see "Licenses," § 6.  
 License law as in conflict with constitutional prohibition against giving public money to private undertaking, see "States," § 119.  
 Power of city to impose, see "Municipal Corporations," § 604.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 5. Marks and brands.

### *Cross-References.*

See ante, § 3.  
 Evidence of identity of animals stolen, see "Larceny," § 45; "Receiving Stolen Goods," § 8.  
 Constitutionality of act prohibiting use of unregistered docked horses, see "Constitutional Law," § 87.  
 Larceny of unbranded animals, see "Larceny," § 26.  
 Placing same brand on cattle of different person, burden of proof as to ownership, see "Confusion of Goods," § 13.  
 Sale by marks and brands, see "Sales," § 69.  
 Destroying or altering, as felony or misdemeanor, see "Criminal Law," § 27.  
 Amendment of verdict, see "Criminal Law," § 889.



Former jeopardy, see "Criminal Law," §§ 200, 202.

Indictment, duplicity, see "Indictment and Information," § 125.

Indictment, joinder of counts, see "Indictment and Information," § 129.

Order of trial of separate indictment, see "Criminal Law," § 621.

§ 6.—Adoption and use in general.

§ 7.—Statutory regulations.

§ 8.—Recording.

§ 9.—Transfer.

§ 10.—Evidence of ownership.

§ 11.—Destroying or altering.

§ 13.—False marking or branding.

§ 13.—Criminal prosecutions.

#### *Cross-Reference.*

See cross-references under § 5, ante.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 14. Driving from range or pasture.

#### *Cross-References.*

See post, § 46.

As larceny, see "Larceny," § 12.

Conviction of, under indictment for larceny, see "Indictment and Information," § 191.

Receiving stolen animals, see "Receiving Stolen Goods," § 2.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 15. Regulations of slaughtering.

#### *Cross-Reference.*

Power of cities to regulate, see "Municipal Corporations," § 611.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 16. Breeding.

#### *Cross-References.*

Licenses, see ante, § 4.

Restraint of animals used for breeding, see post, § 50.

§ 17.—Statutory regulations.

§ 18.—Contracts.

§ 19.—Lien.

§ 20.—Right to offspring.

#### *Annotation.*

Title to the increase of animals.—17 L. R. A. 81, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 21. Agistment, keeping and care.

#### *Cross-References.*

Care of horses and vehicles by liverymen, see "Livery Stable Keepers," §§ 6-8.

Claim for keeping horse as counterclaim in action for conversion, see "Set-Off and Counterclaim," § 29.

Counterclaim based on another transaction, see "Set-Off and Counterclaim," § 34.

Measure of damages for breach of contract, see "Damages," § 120.

Pasturing cattle on Indian lands, see "Indians," § 10.

Possession by vendor as agister affecting validity of conveyance as to creditors, see "Fraudulent Conveyances," § 144.

Rights of parties to assignment of lease, see "Assignments," § 106.

Speculative damages for breach of contract, see "Damages," § 40.

Estrays, see post, § 61.

Lessee of horse, see post, § 27.

Legality of contract, see "Contracts," § 105.

§ 22.—Rights and duties in general.

§ 23.—Loss of or injuries to animals.

§ 24.—Injuries by animals.

§ 25.—Compensation.

§ 26.—Lien.

#### *Cross-References.*

Estrays, see post, § 61.

On impounding trespassing animals, see post, § 95.

Appealability of judgment of justice of the peace in proceedings to enforce lien, see "Justices of the Peace," § 144.

Jurisdiction of municipal court of suit to enforce lien, see "Courts," § 188.

Necessity of showing jurisdiction by record in proceedings to enforce lien in justice's court, see "Justices of the Peace," § 58.

Pleadings on appeal from justice's court, see "Justices of the Peace," § 174.

Priority of mortgage, see "Chattel Mortgages," §§ 87, 138, 142, 144, 147.

Recovery from person claiming under agister's lien by mortgagee, see "Chattel Mortgages," § 173.

Rights of bona fide purchasers, see "Sales," § 239.

Taking by owner of animals subject to lien as larceny, see "Larceny," § 9.

Form of judgment in replevin, see "Replevin," § 103.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 27. Hire and use.

#### *Cross-References.*

Agreement respecting lien as transfer of title, see "Liens," § 1.

Evidence as to extent of damage to hired horse, see "Damages," § 188.

Larceny by hirer or borrower, see "Larceny," § 15.

Nature of action as on contract or in tort, see "Action," § 27.

Pleading in justice's court in action for injuries, see "Justices of the Peace," § 91.

Right of employee to lien for services of team, see "Master and Servant," § 82.

Validity of provisions for forfeiture on failure to satisfy lien created by contract of hiring, see "Liens," § 3.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 28. Contagious and infectious diseases.

### *Cross-Reference.*

Illegality of sale, see "Sales," § 48.

## § 29.—Statutory regulations in general

### *Annotation.*

Validity and construction of statutory regulations as to infected animals.—26 L. R. A. 638; 43 L. R. A. (N. S.) 1066, notes.

## § 30.—Quarantine.

### *Cross-Reference.*

Quarantine regulations as interference with interstate commerce, see "Commerce," § 52.

## § 31.—Restrictions upon transportation.

## § 32.—Destruction of diseased animals.

### *Cross-References.*

By society for prevention of cruelty to animals, see post, § 39.

As taking property without just compensation, see "Eminent Domain," § 2.

Power of county to incur expenditures, see "Counties," § 153½.

Vested right of owner in remedy for value of animals, see "Constitutional Law," § 106.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 33.—Liabilities for communication of disease.

### *Cross-References.*

Liability of agister, see ante, § 23.

Procedure in justice's court, see "Justices of the Peace," § 116.

Removal from state, to federal court of action for damages from shipment of diseased cattle, see "Removal of Causes," § 19.

Venue of action, see "Venue," § 8.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 34.—Offenses.

### *Cross-Reference.*

Criminal prosecutions, see post, § 36.

## § 35.—Penalties for violations of regulations.

## § 36.—Criminal prosecutions.

### *Cross-Reference.*

Bringing sheep into state, jurisdiction of offense, see "Criminal Law," § 90.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 37. Cruelty.

### *Cross-Reference.*

Power of Legislature to create office to enforce laws for the protection of animals, see "Municipal Corporations," § 67.

## § 38.—Statutory regulations.

### *Cross-Reference.*

Effect as to liability for injuring animal, see post, § 44.

(a) Acts 1890, c. 198 (Code, art. 27, § 63), making cruelty to animals a misdemeanor, applies to the city of Baltimore, and supercedes Local Act 1880, c. 129, providing a fine of not less than five nor more than twenty dollars for cruelty to animals in the city of Baltimore.—State v. Falkenham, 73 Md. 463, 21 Atl. 370.

## § 39.—Societies for prevention.

### *Cross-References.*

As charitable institutions, see "Charities," § 10.

Subjects and titles of acts for formation of society, see "Statutes," § 113.

(a) After an election of directors by a society for the prevention of cruelty to animals, Acts 1908, p. 1210, c. 77, was enacted, providing for a special election of directors for the society on April 10th of the same year, and providing that members of the society could vote who had actually become members on or before March 7, 1908, and who had paid their membership dues for 1907 or 1908. *Held*, that new members after the first election and before March 7, 1908, who had paid their dues between March 7th and April 10th, and members who were such before the former election and had paid their dues for 1907 or 1908 prior to the beginning of the special election, were entitled to vote.—Pope v. Whitridge, 110 Md. 468, 73 Atl. 281.

(b) On the day of such election of directors, the cashier of a bank handed the society treasurer a sum of money and a list

of names of persons supposed to be members of the society, with the understanding that the dues of such of them as should be allowed to vote should be taken out of the sum and the residue returned to the bank. The treasurer took the money, but immediately handed it back to the cashier, who turned it over to the teller. The money was not put to the treasurer's credit either as treasurer or in his private capacity. The day after the election, the president of the bank handed the society treasurer a sum as dues of eight of the persons whose names had been on the list and who had been allowed to vote. *Held*, that the transaction did not amount to a valid payment on the day of election of the dues of the eight persons, and they were not entitled to vote, since there was no acceptance of any specific sum by the treasurer of the society and no appropriation of any certain sum to the dues of any member.—*Pope v. Whitridge*, 110 Md. 468, 73 Atl. 281.

(c) The transaction did not constitute a good tender of payment, because it was made to depend on a contingency that could not happen until the election had actually taken place, while to effectuate a tender it must be unconditional.—*Pope v. Whitridge*, 110 Md. 468, 73 Atl. 281.

(d) The by-laws provided that active members should be entitled to vote for directors, and that members paying annually \$5 or more should be considered active members. Acts 1908, p. 1210, c. 77, providing for a special election of directors, omits the word "active" in the provision that members who had joined before a specified time should be entitled to vote at the special election. *Held*, that members who ordinarily were not considered active members and had contributed annually less than \$5 were entitled to vote at the special election.—*Pope v. Whitridge*, 110 Md. 468, 73 Atl. 281.

(e) While ordinarily honorary members of a society have no share in its management, a person who had been a member in the society for over 20 years and an honorary member since 1901, had always attended its meetings and voted without objection, and had made large donations to the society,

was a member entitled to vote at the special election.—*Pope v. Whitridge*, 110 Md. 468, 73 Atl. 281.

(f) The notation by the bookkeeper on the membership book after the name of a member that he "declined to pay," "refused to pay," "resigned," or "asked name to be taken off," is presumed to have been done by authority and to have terminated the membership of such person, so that he could not vote at the special election, unless shown to have been done in error, or the member had been reinstated.—*Pope v. Whitridge*, 110 Md. 468, 73 Atl. 281.

(g) Persons who on one or more occasions gave a donation to the society for some specific purpose, but not for the purpose of becoming members, and who were not carried on the books as such, were not entitled to vote.—*Pope v. Whitridge*, 110 Md. 468, 73 Atl. 281.

(h) A member of the society, who had neglected to pay his annual dues in some one or more years, but who was still carried on the books as a member, was qualified to vote at the special election, if his dues were paid for the years 1907 or 1908, where the allowance of such a practice was customary by the society.—*Pope v. Whitridge*, 110 Md. 468, 73 Atl. 281.

(i) Where the headquarters of the society was at a place where a bookkeeper was in charge of the books and authorized to receive membership dues, keeping the books of account, and the dues of members had been invariably paid to the bookkeeper there for a long period, a tender of members' dues made there was good, though the president of the society had directed the bookkeeper to receive no more dues and ordered them to be paid to the treasurer at his private office at another location, in the absence of any good reason for the change of place of payment.—*Pope v. Whitridge*, 110 Md. 468, 73 Atl. 281.

#### § 40.—Offenses.

##### *Cross-Reference.*

Criminal prosecution, see post, § 42.

##### *Annotation.*

Malice or wilfulness as ingredient of the offense of abusing animals.—41 L. R. A. (N. S.) 433, note.

### § 41.—Penalties for violations of regulations.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 42.—Criminal prosecutions.

#### *Cross-References.*

- Disposition of proceeds of fine, see "Fines," § 20.
- Indictment, duplicity in, see "Indictment and Information," § 125.
- Indictment in language of statute, see "Indictment and Information," § 110.
- Indictment, joinder of counts, see "Indictment and Information," §§ 129, 130.
- Jurisdiction of offense, see "Criminal Law," §§ 84, 90.
- Necessity of indictment, see "Indictment and Information," § 3.
- Preliminary proceedings, see "Criminal Law," § 207.
- Summary trial, see "Criminal Law," § 252.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 43. Injuring or killing animals in general.

#### *Cross-References.*

- Animals running at large, see post, § 52.
- By society for prevention of cruelty to animals, see ante, § 39.
- Dependent on nature of property in animal, see ante, § 2.
- Diseased animals, see ante, § 32.
- Injuries by other animals, see post, §§ 78-88.
- Injuring or killing trespassing animals, see post, § 96.
- Killing vicious animals, see post, §§ 73, 84.
- Hired horses, see "Livery Stable Keepers," § 12.
- Injuries to animals caused by fences, see "Fences," § 25.
- Injuries to animals on or near railroad tracks, see "Railroads," §§ 405-452; "Street Railroads," § 90.
- Liability of innkeeper for loss of or injury to horses belonging to guest, see "Innkeepers," § 11.

### § 44.—Civil liability.

#### *Cross-References.*

- Amendment or correction of verdict in action for, see "Trial," § 340.
- Evidence as to damages, see "Damages," §§ 174, 188.
- Inadequate and excessive damages, see "Damages," § 139.
- Injuries from defects in premises owned or controlled by defendant, see "Negligence," §§ 28-55.
- Liability of vendor of feed for animals, see "Negligence," § 27.

Measure of damages in general, see "Damages," §§ 105, 113.

Persons liable for negligence, see "Negligence," § 26.

Right to nominal damages, see "Damages," § 9.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 45.—Criminal responsibility.

#### *Cross-References.*

- Confessions as evidence, see "Criminal Law," § 520.
- Documentary evidence in prosecution for cruelty to animals, see "Criminal Law," § 438.
- Evidence incriminating others, see "Criminal Law," § 359.
- Evidence of alibi, see "Criminal Law," § 358.
- Evidence of other offenses, see "Criminal Law," § 371.
- Indictment, joinder of counts, see "Indictment and Information," § 130.
- Malicious injury to, see "Malicious Mischief," §§ 1, 4.
- Offer of proof, see "Criminal Law," § 670.
- Reversal of judgment, see "Criminal Law," § 1189.
- Sufficiency of evidence as to elements of offense, see "Criminal Law," § 568.
- Sufficiency of evidence of corpus delicti to support conviction, see "Criminal Law," § 563.
- Trespass, see "Trespass," § 87.

### § 46. Conversion.

#### *Cross-Reference.*

- Effect of violation of Sunday law, see "Sunday," § 26.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 47. Running at large.

#### *Cross-References.*

- Trespassing animals, see post, §§ 91-102.
- Constitutionality of statutes, act providing for establishment of stock law districts as delegation of legislative power, see "Constitutional Law," § 63.
- Constitutionality of statutes, delegation of power to kill unlicensed dogs, see "Constitutional Law," § 64.
- Constitutionality of statutes, denial of equal protection of laws, see "Constitutional Law," § 225.
- Constitutionality of statutes depriving owner of right to recover damages for wrongful seizure, see "Constitutional Law," § 322.
- Constitutionality of statutes, general or special law, see "Statutes," § 77.
- Constitutionality of statutes, subjects and titles of acts, see "Statutes," §§ 110½, 117, 120.

Constitutionality of statutes, submission of stock law to popular vote as delegation of legislative power, see "Constitutional Law," § 65.

Constitutionality of stock laws, discrimination as to localities, see "Constitutional Law," § 225.

Constitutional law, effect of Constitution on previous laws, see "Constitutional Law," § 24.

Effect of fence and stock laws on care required of railroad companies in respect to animals on or near tracks, see "Railroads," § 406.

Exempting certain sections from operation of stock laws as taking property without just compensation, see "Eminent Domain," §§ 2, 17.

Judicial notice of stock laws, see "Criminal Law," § 304.

Legislative control of municipal acts, see "Municipal Corporations," § 78.

Mandamus for establishment of stock law district, see "Mandamus," §§ 3, 99.

Mandamus to compel enactment of ordinances to prevent, see "Mandamus," § 99.

Proceedings under stock laws as invasion of right to trial by jury, see "Jury," § 31.

Repeal of ordinance, see "Municipal Corporations," § 116.

Setting forth provisions of act as amended, see "Statutes," § 141.

Suspending operation of general law, see "Statutes," § 75.

Turnpike as highway within meaning of statutes restraining cattle from going at large, see "Turnpikes and Toll Roads," § 2.

#### § 48.—Rights and duties of owners.

#### § 49.—Statutory regulations in general.

#### § 50.—Stock laws.

##### *Cross-References.*

Appeal from decision of county board, see "Counties," § 58.

What constitutes commencement of term of court, see "Courts," § 63.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 51.—Impounding animals at large.

##### *Cross-References.*

Estrays, see post, § 61.

Pounds, see post, §§ 104-110.

Trespassing animals, see post, § 95.

Power of city, see "Municipal Corporations," § 604.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 52.—Killing or injuring animals at large.

##### *Cross-References.*

Trespassing animals, see post, § 96.

Defects in fences, see "Fences," § 25.

Injuries from defects in premises owned or controlled by defendant, see "Negligence," §§ 28-55, 76.

##### *Annotation.*

Right to kill dogs.—15 L. R. A. 249; 40 L. R. A. 510; 19 L. R. A. (N. S.) 835; 28 L. R. A. (N. S.) 673, notes.

#### § 53.—Injuries by animals at large.

##### *Cross-Reference.*

Duties under stock laws, see ante, § 50.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 54.—Persons liable for injuries.

#### § 55.—Actions.

#### § 56.—Penalties for violations of regulations.

#### § 57.—Criminal prosecutions.

##### *Cross-References.*

Indictment, duplicity, see "Indictment and Information," § 125.

Jurisdiction, see "Criminal Law," §§ 90, 97.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 58.—Estrays.

##### *Cross-References.*

As subject of larceny, see "Larceny," §§ 7, 8.

Right of action against railroad company for injuries to animal taken up as stray, see "Railroads," § 429.

#### § 59.—Rights of owners.

#### § 60.—Statutory regulations.

#### § 61.—Impounding or taking up.

##### *Cross-References.*

Pounds, see post, §§ 104-110.

Running at large in general, see ante, § 51.

Trespassing animals, see post, § 95.

#### § 62.—Injuries by stray animals.

#### § 63.—Actions and other proceedings for damages.

#### § 64.—Penalties for violations of regulations.

#### § 65.—Criminal prosecutions.

##### *Cross-References.*

Indictment for larceny, conviction of using estrays, see "Indictment and Information," § 191.

Indictment, repugnancy, see "Indictment and Information," § 73.

Larceny of stray, see "Larceny," § 3.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 66. Personal injuries.

### Cross-References.

By animals at large, see ante, §§ 53, 55.  
 By animals driven or led through streets, see "Municipal Corporations," § 705.  
 By hired horses, see "Livery Stable Keepers," § 11.  
 Construction of statutes in general, see "Statutes," § 199.  
 Injuries to servant, liability of master, see "Master and Servant," §§ 109, 217.  
 Liabilities released by discharge in bankruptcy, see "Bankruptcy," § 424.  
 Liability of carrier for injury to passenger, see "Carriers," §§ 302, 316.  
 Liability of city, see "Municipal Corporations," § 748.  
 Statutory action for death, see "Death," §§ 7-109.

## § 66½.— Duties of owners in general.

### Cross-Reference.

See § 70, post.

### Annotation.

Liability of owner of bees for injuries done by them.—62 L. R. A. 132, note.

## § 67.— Domestic animals in general.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 68.— Dogs.

(a) When defendant was informed by his hired man in charge of his dog that it was acting strangely, defendant directed its confinement, but made light of the suggestion that it was developing hydrophobia, and in a few days turned it loose with instructions to the servant to shoot it if it acted suspiciously. About an hour later, and a quarter of a mile from defendant's house, it bit plaintiff. *Held*, that the precautions taken were insufficient, and the court properly refused to direct a verdict for defendant.—*Buck v. Brady*, 110 Md. 568, 73 Atl. 277. [Cited and annotated in 24 L. R. A. (N. S.) 463, on scienter necessary to owner's liability for injury by dog; in 37 L. R. A. (N. S.) 866, on measure of damages for injury by dog.]

(b) Whenever there is any reason to suspect that a dog has hydrophobia, the gravity of the disease makes it incumbent on the owner or keeper to be very careful and use every precaution to prevent its inflicting an injury on others.—*Buck v. Brady*, 110 Md. 568, 73 Atl. 277. [Cited and annotated in 24 L. R. A. (N. S.) 463, on scienter necessary to owner's liability for injury by dog;

in 37 L. R. A. (N. S.) 866, on measure of damages for injury by dog.]

## § 69.— Wild animals.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 70.— Knowledge or notice of vicious propensities.

### Cross-References.

Affecting criminal responsibility, see post, § 76.

Evidence, see post, § 74.

Question for jury, see post, § 74.

### Annotation.

Liability of keeper of animal known to be dangerous as affected by absence of negligence on his part.—6 L. R. A. (N. S.) 1164; 2 B. R. C. 14, notes.

What scienter is necessary to charge owner with liability for injury inflicted by dog to person or property of another.—24 L. R. A. (N. S.) 458, note.

(a) Where defendant had been told by his servant in charge of the dog, which bit plaintiff, on more than one occasion that the dog was acting strangely, and he thought it was developing rabies, knowledge of the servant as to its behavior at a particular time was knowledge of defendant.—*Buck v. Brady*, 110 Md. 568, 73 Atl. 277. [Cited and annotated in 24 L. R. A. (N. S.) 463, on scienter necessary to owner's liability for injury by dog; in 37 L. R. A. (N. S.) 866, on measure of damages for personal injury by dog.]

(b) A servant's knowledge of the vicious character of a dog accustomed to follow him about in the master's business, but not put in his charge by the master, is not imputable to the master.—*Twigg v. Ryland*, 62 Md. 380, 50 Am. Rep. 226. [Cited and annotated in 17 L. R. A. (N. S.) 433, as to who is keeper or harbinger of a dog; in 24 L. R. A. (N. S.) 458, 461, 463, on scienter necessary to owner's liability for injury by dog.]

(c) To charge the owner of a dog with liability for personal injuries, it must appear that he had knowledge of the dog's propensity to bite mankind, not merely to bite other animals. But it is not necessary to show that the owner or keeper has seen the animal attack mankind; it is sufficient to show that the vicious propensity of the animal has, in some way, been brought to the knowledge of the owner or keeper, so as to

admonish him to take the necessary precaution to prevent injury in the future.—*Twigg v. Ryland*, 62 Md. 380, 50 Am. Rep. 226. [Cited and annotated in 17 L. R. A. (N. S.) 433, as to who is keeper or harbinger of a dog; in 24 L. R. A. (N. S.) 458, 461, 463, on scienter necessary to owner's liability for injury by dog.]

(d) The defendant was accustomed personally to tie his watch dogs by day, and loose them at night. Having overslept one morning, and neglected to tie the dogs, they bit the plaintiff, who came lawfully on the premises by the invitation of the defendant's daughter. *Held*, that the defendant's knowledge of the dangerous character of the dogs might be inferred from his habit of tying them by day, but not from his wife's asking the daughter why she had not tied them.—*Goode v. Martin*, 57 Md. 606, 40 Am. Rep. 448. [Cited and annotated in 24 L. R. A. (N. S.) 458, 462, 463, on scienter necessary to owner's liability for injury by dog.]

(e) Unless the owner of a dog knows that it has a savage disposition, he is not liable for injuries due to its bite.—*Goode v. Martin*, 57 Md. 606, 40 Am. Rep. 448. [Cited and annotated in 24 L. R. A. (N. S.) 458, 462, 463, on scienter necessary to owner's liability for injury by dog.]

## § 71.—Contributory negligence.

### Cross-References.

Evidence, see post, § 74.

Question for jury, see post, § 74.

Imputed negligence, see "Negligence," § 89.

## § 72.—Persons liable for injuries.

## § 73.—Killing vicious animals.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 74.—Actions.

### Cross-References.

Duplicity in pleading, see "Pleading," § 64.

Evidence of similar injury from other cause than that alleged, see "Evidence," § 141.

Survival of cause of action on death of person injured, see "Abatement and Revival," § 54.

(a) In an action for being bitten by defendant's dog which he set at large after being warned not to do so, and when he had

reason to suspect that it was suffering from rabies, defendant's hired man testified that, having expressed some fear for his children, defendant said not to be so fearful, and that, if they got bitten, they could go to the city for treatment, and be well in a short time. *Held*, that this testimony was admissible, as it tended to show that the witness apprehended danger from the dog and communicated his fears to defendant, whose answer was evidence from which the jury could form an opinion as to whether or not he treated his servant's warnings more lightly than a prudent man would have done.—*Buck v. Brady*, 110 Md. 568, 73 Atl. 277. [Cited and annotated in 24 L. R. A. (N. S.) 463, on scienter necessary to owner's liability for injury by dog; in 37 L. R. A. (N. S.) 866, on measure of damages for personal injury by dog.]

(b) Testimony of defendant's hired man that the dog took hold of a stick which he thrust at it when confined, and seemed cross and angry, though its disposition had been good, was properly admitted, though it did not appear whether this particular incident was communicated to defendant, the witness having charge of the dog, and having told defendant on more than one occasion that it was acting strangely, and he thought it was developing rabies.—*Buck v. Brady*, 110 Md. 568, 73 Atl. 277. [Cited and annotated in 24 L. R. A. (N. S.) 463, on scienter necessary to owner's liability for injury by dog; in 37 L. R. A. (N. S.) 866, on measure of damages for personal injury by dog.]

(c) In an action for being bitten by a dog, evidence of plaintiff as to her fear at the time and at the trial as to her acquiring hydrophobia was relevant.—*Buck v. Brady*, 110 Md. 568, 73 Atl. 277. [Cited and annotated in 24 L. R. A. (N. S.) 463, on scienter necessary to owner's liability for injury by dog; in 37 L. R. A. (N. S.) 866, on measure of damages for personal injury by dog.]

(d) Evidence that plaintiff, knowing the dog to be vicious, "encouraged" the dog to be about her premises, is admissible as tending to show contributory negligence.—*Twigg v. Ryland*, 62 Md. 380, 50 Am. Rep. 226. [Cited and annotated in 17 L. R. A. (N. S.) 433, as to who is keeper or har-

borer of a dog; in 24 L. R. A. (N. S.) 458, 461, 463, on scienter necessary to owner's liability for injury by dog.]

(e) In an action for personal injury due to the bite of a dog, the burden of proving that the owner had knowledge of its vicious propensity is on plaintiff.—*Twigg v. Ryland*, 62 Md. 380, 50 Am. Rep. 226. [Cited and annotated in 17 L. R. A. (N. S.) 433, as to who is keeper or harbinger of a dog; in 24 L. R. A. (N. S.) 458, 461, 463, on scienter necessary to owner's liability for injury by dog.]

(f) Where the evidence in an action by one bitten by a dog, to recover damages therefor from the owner, tended to show the vicious disposition of such dog and the owner's knowledge thereof, it was error to take the case from the jury.—*Goode v. Martin*, 57 Md. 606, 40 Am. Rep. 448. [Cited and annotated in 24 L. R. A. (N. S.) 458, 462, 463, on scienter necessary to owner's liability for injury by dog.]

(g) The defendant was accustomed personally to tie his watch dogs by day, and loose them at night. Having overslept one morning, and neglected to tie the dogs, they bit the plaintiff, who came lawfully on the premises by the invitation of the defendant's daughter. Held, that the defendant's knowledge of the dangerous character of the dogs might be inferred from his habit of tying them by day, but not from his wife's asking the daughter why she had not tied them.—*Goode v. Martin*, 57 Md. 606, 40 Am. Rep. 448. [Cited and annotated in 24 L. R. A. (N. S.) 458, 462, 463, on scienter necessary to owner's liability for injury by dog.]

#### § 75.—Penalties for violations of regulations.

#### § 76.—Criminal prosecutions.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 77. Injuries to other animals.

##### Cross-References.

Survival of cause of action on death of party, see "Abatement and Revival," § 55.

Question for jury, see post, § 85.

#### § 78.—Duties of owners in general.

#### § 79.—Statutory regulations.

#### § 80.—Domestic animals in general.

#### § 81.—Dogs.

#### § 82.—Knowledge or notice of vicious propensities.

#### § 83.—Persons liable for injuries.

#### § 84.—Killing vicious animals.

#### § 85.—Actions.

#### § 86.—Penalties for violations of regulations.

#### § 87.—Criminal prosecutions.

#### § 88.—Liabilities of municipalities.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 89. Trespassing.

##### Cross-References.

By animals at large, see ante, §§ 53, 55.

Consent to trespass, see "Trespass," § 25.

#### § 90.—Duties of owners.

(a) The owner of cattle is bound to keep them upon his own land, and is responsible for their trespasses, as well upon land over which a railroad company lawfully exercises its franchise as upon land of private owners.—*Baltimore & O. R. Co. v. Lam-born*, 12 Md. 257.

(b) The owner of domestic cattle is bound at his peril to confine them to his own land.—*Richardson v. Milburn*, 11 Md. 340. [Cited and annotated in 22 L. R. A. 62, on owner's liability for trespass of cattle; in 53 L. R. A. 631, on extent of trespasser's liability for consequential injuries; in 30 L. R. A. (N. S.) 244, on necessity and character of title or possession to sustain action of trespass; in 43 L. R. A. (N. S.) 448, on liability of landowner for damage by stock which enter upon his land and thence wander to adjoining property.]

(c) Where there has been no valid division according to law of the line between adjoining lots for the maintenance of a partition fence, the owner of each lot is bound to keep his cattle from crossing the line.—*Richardson v. Milburn*, 11 Md. 340. [Cited and annotated in 22 L. R. A. 62, on owner's liability for trespass of cattle; in 53 L. R. A. 631, on extent of trespasser's liability for consequential injuries; in 30 L. R. A. (N. S.) 244, on necessity and character of title or possession to sustain action of trespass; in 43 L. R. A. (N. S.) 448, on liability of landowner for damage by stock



which enter upon his land and thence wander to adjoining property.]

### § 91.—Statutory regulations in general.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 92.—Fencing and fence laws.

#### Cross-References.

Defects in fences, see post, § 98.

Stock laws, see ante, § 50.

(a) The obligation to fence out cattle can arise only from a division of the fence by fence viewers acting under the statute, or by a valid agreement in writing between the owners of adjoining lots, or by prescription.—*Richardson v. Milburn*, 11 Md. 340. [Cited and annotated in 22 L. R. A. 62, on owner's liability for trespass of cattle; in 53 L. R. A. 631, on extent of trespasser's liability for consequential injuries; in 30 L. R. A. (N. S.) 244, on necessity and character of title or possession to sustain action of trespass; in 43 L. R. A. (N. S.) 448, on liability of landowner for damage by stock which enter upon his land and thence wander to adjoining property.]

### § 93.—What constitutes a trespass.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 94.—Driving off trespassing animals.

(a) Defendant who takes a mare trespassing on his property, and rides her some miles beyond the limits of his property, and turns her out, is liable in trespass therefor.—*Knott v. Digges*, 6 H. & J. 230.

### § 95.—Impounding or detaining trespassing animals, and lien for damages.

#### Cross-References.

See "Trespass," § 8.

Animals at large in general, see ante, § 51.

As estrays, see ante, § 61.

Pounds, see post, §§ 104-110.

Liability of agent taking up trespassing stock for injuries, see "Principal and Agent," § 136.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 96.—Injuring or killing trespassing animals.

#### Cross-References.

Evidence, see post, § 100.

Question for jury, see post, § 100.

Defects in fences, see "Fences," § 25.

Injuries from defects in premises owned or controlled by defendant, see "Negligence," §§ 6, 28-55, 68.

#### Annotation.

Right to kill trespassing and predatory dogs.—15 L. R. A. 250; 40 L. R. A. 511; 19 L. R. A. (N. S.) 836, notes.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 97.—Liabilities for trespasses in general.

(a) One whose cattle stray upon a railway, where they are run over by a train, which is damaged by the collision, is liable to the railway company therefor, if he was negligent in his care of the cattle, but not otherwise.—*Annapolis & E. R. Co. v. Baldwin*, 60 Md. 88, 45 Am. Rep. 711.

### § 98.—Effect of defects in fences.

#### Cross-References.

Evidence, see post, § 100.

Question for jury, see post, § 100.

Validity, construction, and operation of fence laws, see ante, § 92.

#### Annotation.

Liability of owner for defects in partition fence.—22 L. R. A. 62, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 99.—Persons liable for injuries.

#### Annotation.

Liability of owner for trespass of cattle.—22 L. R. A. 55, note.

Liability of landowner for damage by trespassing live stock which enter upon his land and thence wander to adjoining property.—43 L. R. A. (N. S.) 447, note.

(a) Where, in consequence of the removal of a fence by defendant, cattle belonging to other persons entered upon plaintiff's land, to his damage, plaintiff cannot recover, in the absence of proof that the fence so removed was his, or that defendant committed a trespass in removing it.—*Richardson v. Milburn*, 11 Md. 340. [Cited and annotated in 22 L. R. A. 62, on owner's liability for trespass of cattle; in 53 L. R. A. 631, on extent of trespasser's liability for consequential injuries; in 30 L. R. A. (N. S.) 244, on necessity and character of title or possession to sustain action of trespass; in 43 L. R. A. (N. S.) 448, on liability of landowner for damage by stock which enter

upon his land and thence wander to adjoining property.]

**§ 100.— Actions and other proceedings for damages.**

*Cross-References.*

Courts invested with original jurisdiction, see "Courts," § 145.

Severance and apportionment of damages by verdict, see "Trial," § 335.

Single cause of action, see "Action," § 38.

Objection to introduction of evidence under pleading, see "Pleading," § 428.

Certainty as to amount, see "Damages," § 6.

**§ 101.— Penalties for violations of regulations.**

**§ 102.— Criminal prosecutions.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 103. Pounds.**

*Cross-References.*

Impounding animals running at large, see ante, § 51.

Impounding animals trespassing, see ante, § 95.

Impounding estrays, see ante, § 61.

Constitutionality of statute, deprivation of property without due process of law, see "Constitutional Law," § 306.

Liability of city for nonperformance of contract with pound keeper, see "Municipal Corporations," § 253.

Power of cities to establish and regulate, see "Municipal Corporations," §§ 604, 629.

**§ 104.— Establishment and maintenance.**

**§ 105.— Pound keepers.**

**§ 106.— Sale of impounded animals.**

**§ 107.— Redemption of impounded animals.**

**§ 108.— Offenses.**

**§ 109.— Penalties.**

**§ 110.— Criminal prosecutions.**

*Cross-References.*

Harmless error, see "Criminal Law," § 1172.

Prevention of crime, see "Criminal Law," § 1223.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**ANIMUS MANENDI.**

*Cross-Reference.*

Acquisition of domicile for purpose of obtaining divorce, see "Divorce," § 64.

**ANNEXATION.**

*Cross-References.*

Of affidavit to chattel mortgage, see "Chattel Mortgages," § 63.

Of exhibits to deposition, see "Depositions," § 68.

Of exhibits to order or commission for taking depositions, see "Depositions," § 47.

Of exhibits to pleading, see "Pleading," § 307.

Of fixtures to real property, see "Fixtures."

Of land to irrigation district, see "Waters and Water Courses," § 226.

Of territory to municipal corporation, see "Municipal Corporations," § 29.

Of territory to municipal corporation for special purpose, see "Municipal Corporations," § 38.

Of territory to school district for special purpose, see "Schools and School Districts," § 42.

*Annotation.*

1 Words and Phrases, 399, 400.

**ANNUITIES.**

*Scope-Note.*

[INCLUDES sums of money stipulated to be paid yearly or at other fixed intervals, perpetually or during life or a term of years, not reserved out of or charged on realty; organization, franchises, and powers of companies for granting such annuities; rights and liabilities in respect thereof, and remedies relating thereto.

[EXCLUDES rent charges and ground rents (see "Estates"; "Ground Rents"), and bequests of annuities (see "Wills"). For complete list of matters excluded, see cross-references, post.]

*Analysis.*

§ 1. Nature and creation in general.

§ 2. Annuity companies.

§ 3. Duration and termination.

- § 4. Apportionment.
- § 5. Payment and satisfaction.
- § 6. Rights and remedies of annuitants.

*Cross-References.*

Accrual of right of action for debt released by agreement to pay annuity, see "Limitation of Actions," § 46.  
 Agreement to pay annuity as discharge of debt, see "Accord and Satisfaction," § 19.  
 Allowance as claim against decedent's estate, see "Executors and Administrators," § 202.  
 Annual payments awarded as dower, see "Dower," § 94.  
 Bond to secure payment as claim provable in bankruptcy, see "Bankruptcy," § 316.  
 Competency of annuity tables as evidence, see "Evidence," § 365.  
 Contract for payment as usurious, see "Usury," § 40.  
 Contract to devise annuity, see "Wills," § 59.  
 Creation by marriage settlement, see "Husband and Wife," § 31.  
 Creditors' suit to reach annuity, see "Creditors' Suit," § 8.

Demurrer raising fraud in agreement to pay annuity in discharge of debt, see "Accord and Satisfaction," § 25.  
 Disposition by will, see "Wills," §§ 568, 619.  
 Duty of executor to reserve assets to pay annuities, see "Executors and Administrators," § 316.  
 Ground rents, see "Ground Rents."  
 Liability to taxation, see "Taxation," § 77.  
 Payment by executor in distribution of estate of decedent, see "Executors and Administrators," § 306.  
 Payment by trustee, see "Trusts," § 281.  
 Preference or abatement of annuity bequeathed, see "Wills," § 810.  
 Rights of annuitants under will, see "Wills," § 729.  
 Transfer of trust to pay annuity, see "Trusts," § 147.  
 Valuation for assessment of legacy, inheritance and transfer taxes, see "Taxation," § 896.

**§ 1. Nature and creation in general.**

(a) A life annuity, not issuing out of or charged on lands, need not, unless so required by statute, be created by deed.—*Cahill v. Maryland Life Ins. Co. of Baltimore City*, 90 Md. 333, 45 Atl. 180, 47 L. R. A. 614.

(b) The words, "I give to A. the sum of \$60, as an annuity, to be paid to her out of the profits of my real estate annually," create an annuity, and not a rent charge.—*Robinson v. Townshend*, 3 G. & J. 413.

**§ 2. Annuity companies.**

(a) Charter power to grant or dispose of annuities does not require their creation, where not arising out of or charged on lands, to be by deed.—*Cahill v. Maryland Life Ins. Co. of Baltimore City*, 90 Md. 333, 45 Atl. 180, 47 L. R. A. 614.

(b) Even if, under a charter power to grant or dispose of an annuity, it should be by deed, a contract to pay annuity, for a consideration paid, is not ultra vires, and therefore cannot be avoided by either party because not under seal.—*Cahill v. Maryland Life Ins. Co. of Baltimore City*, 90 Md. 333, 45 Atl. 180, 47 L. R. A. 614.

**§ 3. Duration and termination.**

(a) Where land is devised, charged with an annuity payable to a lunatic, the annuity is not a rent issuing out of the lands, but an incumbrance following the land into whosoever hands it goes; and equity will enforce the prompt payment of the annuity against the personal estate of the holder of the land, or by putting a receiver upon it.—*Owings' Case*, 1 Bland 290.

**§ 4. Apportionment.**

*Annotation.*

Apportionment of annuities in absence of statute.—63 L. R. A. 616; 29 L. R. A. (N. S.) 675, notes.

(a) Under the rule that annuities are not apportionable, except in specified cases, an annuity to the wife of testator's son payable on decease of the son and during the wife's lifetime was not apportionable, and on her decease before payment of an installment her administrators were not entitled thereto, the provision not being for the wife's maintenance.—*Brown v. Brown*, 112 Md. 398, 76 Atl. 846.

**§ 5. Payment and satisfaction.**

*Cross-Reference.*

By executor, see "Executors and Administrators," § 306.

(a) An annuity having been charged on several parcels of real estate devised to one person, the right of the annuitant to enforce the charge against any of the property devised can be waived only by agreement on his part, and is not affected by deeds or transactions to which he was not a party.—*Perkins v. Emory*, 55 Md. 27.

(b) The method in Maryland of ascertaining the present value of an annuity for life, as adopted by the Court of Appeals, is to apply by analogy the chancery rule for fixing the allowance to a woman in lieu of dower in lands sold under a decree.—*Peyton v. Ayres*, 2 Md. Ch. 64.

(c) A bill in equity will lie to enforce payment of an annuity charged upon land.—*Townshend v. Duncan*, 2 Bland 45.

(d) The payment of an annuity charged on land will be enforced against the personal estate of the holder of the land, or by putting a receiver upon it.—*Owings' Case*, 1 Bland 290.

#### § 6. Rights and remedies of annuitants.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### ANNULMENT.

#### Cross-References.

- Actions to annul written instruments, see "Cancellation of Instruments."
- Of acts or contracts of receivers, see "Receivers," § 116.
- Of assessment, see "Municipal Corporations," §§ 506, 974; "Taxation," §§ 451-500.
- Of decisions of courts, jurisdiction of courts of other states or countries, see "Courts," § 517.
- Of decisions of federal courts, jurisdiction of state courts, see "Courts," § 509.
- Of decisions of state courts, jurisdiction of federal courts, see "Courts," § 509.
- Of decisions of state courts, jurisdiction of other state courts, see "Courts," § 481.
- Of insurance policy, see "Insurance," §§ 226-249.
- Of letters patent, see "Patents," § 128.
- Of marriage, see "Marriage," §§ 57-67.
- Of order establishing independent school district, see "Schools and School Districts," § 26.
- Of ordinance, resolution or order for public improvement, see "Municipal Corporations," § 310.
- Of will, see "Wills," §§ 203-434.

### ANOMALOUS INDORSEMENT.

#### Cross-Reference.

Of bill or note, see "Bills and Notes," § 191.

#### Annotation.

1 Words and Phrases, 406.

### ANOTHER.

#### Cross-Reference.

Action pending, see "Abatement and Revival," §§ 4-17; "Action," § 69.

#### Annotation.

1 Words and Phrases, 406, 407.

### ANOTHER ACTION PENDING.

#### Cross-References.

- Ground for abatement, see "Abatement and Revival," §§ 7-13; "Divorce," § 82.
- Ground for continuance, see "Continuance," § 10.
- Ground for stay of proceedings, see "Action," § 69.
- Splitting cause of action, see "Action," § 53.

### ANSWER.

#### Cross-References.

- As cross-bill, see "Equity," § 203.
- In highway proceedings, see "Highways," § 32.
- In pleading, see "Pleading," §§ 76-161.
- In pleading to bill in equity, see "Equity," §§ 178-191.
- In pleading to libel in admiralty, see "Admiralty," § 61.
- Of corporation garnishee, see "Corporations," § 509.
- Of justice to certiorari, see "Justices of the Peace," § 205.
- To cross-bill, see "Equity," § 206.
- To interrogatories in pleading, see "Admiralty," § 75.
- To interrogatories to party, see "Discovery," §§ 67-69.
- To rule or motion in general, see "Motions," §§ 31, 59.

#### Annotation.

1 Words and Phrases, 408-410.

### ANTENUPTIAL CONTRACTS.

#### Cross-References.

- Contracts and debts between husband and wife existing at time of marriage, see "Husband and Wife," § 38.
- Contracts of wife before marriage, see "Husband and Wife," § 78.
- Marriage settlements, see "Husband and Wife," §§ 26-35.

### ANTENUPTIAL DEBTS

#### Cross-Reference.

Of wife, liability of husband, see "Husband and Wife," § 18.

### ANTENUPTIAL INCONTINENCE.

#### Cross-Reference.

See "Divorce," § 126.

**ANTICHRESIS.***Cross-Reference.*

See "Mortgages," §§ 6, 188.

*Annotation.*

1 Words and Phrases, 411.

**ANTICIPATION.***Cross-References.*

By master of injury to servant, see "Master and Servant," § 97.

Failure to anticipate danger as contributory negligence, see "Negligence," § 70.

Of invention, see "Patents," §§ 50-74.

*Annotation.*

1 Words and Phrases, 411.

**ANTI-TRUST LAW.***Cross-Reference.*

See "Monopolies," §§ 8-31.

**APEX.***Cross-Reference.*

Of vein or lode, see "Mines and Minerals," §§ 28-33.

*Annotation.*

1 Words and Phrases, 438.

**APOTHECARIES.***Cross-Reference.*

See "Druggists."

*Annotation.*

1 Words and Phrases, 438, 439.

**APPARATUS.***Cross-Reference.*

For schools, see "Schools and School Districts," § 75.

*Annotation.*

1 Words and Phrases, 439, 440.

**APPEAL AND ERROR.***Scope-Note.*

[INCLUDES review by superior tribunals of judicial action of inferior tribunals in general, and, more particularly, such review of decisions of courts of record in civil actions, by removal of the cause to the higher court by appeal or writ of error, or by hearing on a case made and reported or certified by the lower court, or on exceptions taken in the lower court; nature and scope of the remedy and of appellate jurisdiction in general; proceedings in the trial court to make objections to its action available on appeal, writ of error, etc.; proceedings to take and perfect appeals, sue out writs of error, etc., and effect thereof and of supersedeas or stay pending appeal, error, etc.; removal of cause, record, etc., to higher court; hearing and determination of appeals, writs of error, exceptions, etc., effect of decisions thereon, and proceedings on such decisions; and liabilities on and enforcement of securities given to perfect appeal or obtain supersedeas, stay, etc.]

[EXCLUDES making and filing bills of exceptions (see "*Exceptions, Bill of*"); applications to trial courts for new trials (see "*New Trial*"); opening and vacating judgments and correction of errors in judgments on motion, writ of error coram nobis, or other proceeding in the court in which they were rendered (see "*Judgment*"); review of judgments not subjects of appeal or writ of error, etc., or for causes arising subsequently to the decision or otherwise not ground of appeal, etc. (see "*Certiorari*"; "*Review*"; "*Audita Querela*"); review of decisions in actions for particular forms of relief (see "*Ejectment*"; "*Replevin*"; "*Partition*"; "*Divorce*"; and other specific heads), or in civil proceedings other than actions (see "*Certiorari*"; "*Habeas Corpus*"; "*Mandamus*"; and other specific heads); rehearing and bills of review in suits in equity (see "*Equity*"); appeals in admiralty (see "*Admiralty*"); appeals and supervision of proceedings under insolvent acts (see "*Insolvency*") or bankrupt acts (see "*Bankruptcy*"); review of proceedings in criminal prosecutions (see "*Criminal Law*"); appeals from decisions of justices of the peace (see "*Justices of the Peace*"); appellate jurisdiction of particular courts and proceedings for removing, reporting, certifying, etc., causes or questions from and to particular courts (see "*Courts*"); and costs on appeal, writ of error, etc., and damages for frivolous or vexatious appeals, etc. (see "*Costs*"). For complete list of matters excluded, see cross-references, post.]

*Analysis.*

**I. Nature and Form of Remedy.**

- § 1. Origin, nature, and scope of remedies in general.
- § 2. Statutory provisions and remedies.
- § 3. Proper mode of review.
- § 4. — Appeal.
- § 5. — Writ of error.
- § 6. — Exceptions.
- § 7. — Writ of supersedeas.
- § 8. — Reservation or certification of cases or questions.
- § 9. Existence of other remedy in lower court.
- § 10. Existence of other remedy for review.
- § 11. Right to different remedies in same case.
- § 12. Election between remedies.
- § 13. Pendency of another proceeding.
- § 14. Successive appeals and cross-appeals or other proceedings.
- § 15. Joinder of proceedings, and double appeals or other proceedings.
- § 16. Separate appeals in related causes.

**II. Nature and Grounds of Appellate Jurisdiction.**

- § 17. Nature and source.
- § 18. Grounds and extent in general.
- § 19. Existence of actual controversy.
- § 20. Jurisdiction of lower court.
- § 21. Consent of parties.
- § 22. Waiver of objections.
- § 23. Determination of questions of jurisdiction in general.

**III. Decisions Reviewable.**

(A) COURTS AND OTHER TRIBUNALS SUBJECT TO REVIEW.

- § 24. Judicial character of tribunal.
- § 25. Courts of original jurisdiction in general.
- § 26. County courts.
- § 27. Municipal and other local courts.
- § 28. Probate courts.
- § 30. Judges and judicial officers.
- § 31. Special tribunals, boards, and officers exercising judicial functions.
- § 32. Intermediate courts.

(B) NATURE OF SUBJECT-MATTER AND CHARACTER OF PARTIES.

- § 33. Constitutional questions in general.
- § 34. Validity of statutes or ordinances.
- § 35. Franchises and matters of public interest.
- § 36. Revenue.
- § 37. States, political divisions, or officers as parties.
- § 38. Title to real property.
- § 40. Probate cases, and claims against decedents' estates.
- § 41. Nature or form of action or proceeding.
- § 42. Important or doubtful questions.
- § 43. Cases in intermediate courts.
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**III. Decisions Reviewable—Continued****(C) AMOUNT OR VALUE IN CONTROVERSY.**

- § 45. Cases subject to pecuniary limitations.
- § 46. Requisite amount or value.
- § 47. Amount claimed.
- § 48. Value of property or right claimed.
- § 49. Amount or value actually involved.
- § 50. — In general.
- § 51. — Effect of set-off or counterclaim.
- § 52. — Appeal as to part of subject-matter.
- § 53. — Determination of amount.
- § 54. Interest accrued.
- § 55. Amount or value of recovery.
- § 56. — In general.
- § 57. — Effect of counterclaim.
- § 58. — Interest on recovery.
- § 59. — Costs and attorney's fees.
- § 60. — Collateral effect of judgment.
- § 61. Aggregated claims, interests, or judgments.
- § 62. Reduction by amendment or remission.
- § 63. Reduction by payment or other satisfaction.
- § 64. Cases in intermediate courts.
- § 65. Cases originating in inferior courts.

**(D) FINALITY OF DETERMINATION.**

- § 66. Necessity of final determination.
- § 67. Interlocutory and intermediate decisions.
- § 68. — Nature in general.
- § 69. — Nature or form of action or proceeding.
- § 70. — Nature and scope of decision.
- § 71. — Affecting provisional remedies.
- § 72. — Affecting collateral matters and proceedings.
- § 73. — Appealable judgments and orders.
- § 74. — Effect of right to review on appeal from final judgment.
- § 75. Final judgments or decrees.
- § 76. — Nature in general.
- § 77. — Nature or form of action or proceeding.
- § 78. — Nature and scope of decision.
- § 79. — Finality as to all parties.
- § 80. — Determination of controversy.
- § 81. — Collateral matters and proceedings.
- § 82. Orders after judgment.
- § 83. Final orders in special proceedings.
- § 84. Decisions of intermediate courts.

**(E) NATURE, SCOPE, AND EFFECT OF DECISION.**

- § 85. Judicial nature of decision.
- § 86. Discretionary action.
- § 87. — Matters resting in discretion.
- § 88. — Refusal to exercise discretion.
- § 89. — Abuse of discretion.

**III. Decisions Reviewable—Continued.****(E) NATURE, SCOPE, AND EFFECT OF DECISION—Continued.**

- § 90. Involving merits.
- § 91. Affecting substantial rights.
- § 92. Adjudicating principles of cause.
- § 93. Determining action and preventing judgment.
- § 94. Assuming or refusing jurisdiction.
- § 95. Relating to parties or process.
- § 96. Relating to provisional remedies.
- § 97. — In general.
- § 98. — Arrest and bail.
- § 99. — Attachment and garnishment.
- § 100. — Injunction.
- § 101. — Receiver.
- § 102. On demurrer.
- § 103. On motion relating to pleadings.
- § 104. Relating to witnesses, depositions, affidavits, or discovery.
- § 105. Dismissal or nonsuit.
- § 106. Relating to place, time, or conduct of trial.
- § 107. Relating to reference of cause.
- § 108. Relating to verdict or findings.
- § 109. On motion for judgment notwithstanding verdict.
- § 110. On motion for new trial.
- § 111. Partial judgment or decision.
- § 112. Void judgment or order.
- § 113. Opening or vacating judgment or order.
- § 114. Confirming or carrying out or enforcing previous decision.
- § 115. Relating to execution or judicial sale.
- § 116. In proceedings supplementary to execution.
- § 117. In proceedings for review.
- § 118. In proceedings after decision of appellate court.
- § 119. Relating to costs.
- § 120. Decisions of intermediate courts.
- § 121. Decisions conflicting with previous decisions.
- § 122. Proceedings for review of part of judgment or order.

**(F) MODE OF RENDITION, FORM, AND ENTRY OF JUDGMENT OR ORDER.**

- § 123. Necessity of formal judgment or order.
- § 124. By confession.
- § 125. On consent, offer, or admission.
- § 126. On submission of controversy or agreed case.
- § 127. By default.
- § 128. On ex parte proceeding.
- § 129. On motion or summary proceeding.
- § 130. On trial of issues.
- § 131. On proceedings at chambers or in vacation.
- § 132. Pro forma judgment or order.
- § 133. Order for judgment.
- § 134. Entry of judgment or order.
- § 135. Findings and conclusions of intermediate courts.



**IV. Right of Review.****(A) PERSONS ENTITLED.**

- § 136. Nature and grounds of right.
- § 137. Parties of record.
- § 138. — In general.
- § 139. — Nominal and unnecessary parties.
- § 140. — Parties not served with process.
- § 141. — Representative or official capacity.
- § 142. — States, political divisions, boards, or officers.
- § 143. — Interveners and claimants.
- § 144. — Effect of dismissal as to parties.
- § 145. — Separate appeals by different parties.
- § 146. — Appeals between co-parties.
- § 147. Privity with parties.
- § 148. Persons other than parties or privies.
- § 149. Interveners for purpose of appeal.
- § 150. Interest in subject-matter.
- § 151. Parties or persons injured or aggrieved.
- § 152. Decisions of intermediate courts.

**(B) ESTOPPEL, WAIVER, OR AGREEMENTS AFFECTING RIGHT.**

- § 153. Inconsistent position or action in general.
- § 154. Recognition of or acquiescence in decision.
- § 155. Entry by appellant of judgment or order.
- § 156. Compliance with judgment or order.
- § 157. — In general.
- § 158. — Payment of or on judgment.
- § 159. — Payment of costs.
- § 160. Acceptance of benefits.
- § 161. — In general.
- § 162. — Payment of or on judgment.
- § 163. — Payment of costs.
- § 164. — Enforcement of judgment or order.
- § 165. Pursuing other remedy.
- § 166. Release of errors.
- § 167. Agreements and stipulations.
- § 168. Waiver of objections to right of appeal.

**V. Presentation and Reservation in Lower Court of Grounds of Review.****(A) ISSUES AND QUESTIONS IN LOWER COURT.**

- § 169. Necessity of presentation in general.
- § 170. Nature or subject-matter of issues or questions.
- § 171. Nature and theory of cause.
- § 172. Grounds of action or relief.
- § 173. Grounds of defense or opposition.
- § 174. Capacity or right to sue or defend.
- § 175. Scope of issues or questions.
- § 176. Facts admitted or conceded in lower court.
- § 177. Incidental and collateral matters.
- § 178. Questions in intermediate courts.
- § 179. Sufficiency of presentation of questions.

**V. Presentation and Reservation in Lower Court of Grounds of Review—**  
Continued.

**(B) OBJECTIONS AND MOTIONS, AND RULINGS THEREON.**

- § 181. Necessity of objections in general.
- § 182. Nature or form of remedy.
- § 183. — Objections in general.
- § 184. — Remedy at law or in equity.
- § 185. Organization and jurisdiction of lower court.
- § 186. Venue.
- § 187. Parties.
- § 188. Process and notice.
- § 189. Motions and other incidental and collateral proceedings.
- § 190. Proceedings relating to provisional remedies.
- § 191. Pleading.
- § 192. — Defects in general.
- § 193. — Objections to declaration, complaint, or petition.
- § 194. — Objections to plea or answer, or to subsequent pleadings.
- § 195. — Amendments and supplemental pleadings.
- § 196. — Motions.
- § 197. — Variance.
- § 198. Reference of cause or question.
- § 199. Proceedings preliminary to trial or hearing.
- § 200. Qualifications and selection, impaneling and oath of jurors.
- § 201. Mode and conduct of trial or hearing.
- § 202. Evidence and witnesses.
- § 203. — In general.
- § 204. — Admission of evidence.
- § 205. — Exclusion of evidence.
- § 206. — Reception of evidence and examination of witnesses.
- § 207. Arguments and conduct of counsel.
- § 208. Sufficiency of evidence.
- § 209. — In general.
- § 210. — Taking case or question from jury in general.
- § 211. — Dismissal or nonsuit.
- § 212. — Direction of verdict.
- § 213. Submission of case or question to jury.
- § 214. Instructions.
- § 215. — Objections in general.
- § 216. — Requests and failure to give instructions.
- § 217. Custody and conduct of jury.
- § 218. Verdict and findings by jury.
- § 219. Trial, decision, and findings by court.
- § 220. Hearing, findings, and report by referee, commissioner, or auditor.
- § 221. Amount of recovery or extent of relief.
- § 222. Motion in arrest or for new trial or rehearing.
- § 223. Judgment.
- § 224. Vacation or modification of judgment.
- § 225. Execution and enforcement of judgment.
- § 226. Costs.

**V. Presentation and Reservation in Lower Court of Grounds of Review—**  
Continued.

**(B) OBJECTIONS AND MOTIONS, AND RULINGS THEREON—Continued.**

- § 227. Proceedings for review.
- § 228. Objections to appeal to intermediate court.
- § 230. Necessity of timely objections.
- § 231. Necessity of specific objection.
- § 232. Scope and effect of objection.
- § 233. Mode of making objections in general.
- § 234. Necessity of motion presenting objection.
- § 235. — In general.
- § 236. — In proceedings before trial or hearing.
- § 237. — At trial or hearing.
- § 238. — As to judgment, or modification or vacation of judgment.
- § 239. — As to costs.
- § 240. — Review of specific questions and particular decisions.
- § 241. — Sufficiency and scope of motion.
- § 242. Necessity of ruling on objection or motion.
- § 243. Effect of failure to make objection.
- § 244. — Objections deemed to have been made.
- § 245. — Want of opportunity to object.
- § 247. Adding to or changing grounds of objection.

**(C) EXCEPTIONS.**

- § 248. Necessity in general.
- § 249. Necessity on trial by court or referee in general.
- § 250. Necessity in equitable actions.
- § 251. Review of questions of law in general.
- § 252. Review of rulings as to pleadings.
- § 253. — In general.
- § 254. — On demurrer.
- § 255. — As to amendment.
- § 256. — On motion.
- § 257. Review of rulings or orders before trial or hearing.
- § 258. Review of proceedings at trial.
- § 259. — Mode and conduct of trial in general.
- § 260. — Rulings as to evidence.
- § 261. — Rulings as to arguments and conduct of counsel.
- § 262. — Rulings as to submission of case or question to jury.
- § 263. — Instructions, and failure or refusal to give instructions.
- § 264. Exceptions to verdict or findings by jury.
- § 265. Exceptions to decision or findings by court.
- § 266. Exceptions to rulings, report, or findings of referee, commissioner, or auditor.
- § 267. Exceptions to judgment.
- § 268. Review of sufficiency of evidence to sustain verdict, findings, or judgment.
- § 269. Review of amount of recovery or relief awarded.
- § 270. Exceptions to rulings and orders after trial or judgment.
- § 271. Review of decisions of intermediate courts.

**V. Presentation and Reservation in Lower Court of Grounds of Review—**

Continued.

**(C) EXCEPTIONS—Continued.**

- § 272. Necessity of timely exception.
- § 273. Necessity of specific exception.
- § 274. Scope and effect.
- § 275. Necessity of ruling on exception.
- § 276. Effect of failure to take proper exception.
- § 277. — Exception deemed to have been taken.
- § 278. — Agreements to give benefit of exception.
- § 279. — Relief against failure to except.
- § 280. Waiver of exceptions.

**(D) MOTIONS FOR NEW TRIAL.**

- § 281. Necessity in general.
  - § 282. Necessity on trial by court or referee in general.
  - § 283. Necessity in equitable actions.
  - § 284. Review of questions of law in general.
  - § 285. Review of rulings as to pleadings.
  - § 286. Review of rulings or orders before trial or hearing.
  - § 287. Review of proceedings at trial.
  - § 288. — Mode and conduct of trial in general.
  - § 289. — Rulings as to evidence.
  - § 290. — Rulings as to arguments and conduct of counsel.
  - § 291. — Rulings as to submission of case or question to jury.
  - § 292. — Instructions, and failure or refusal to give instructions.
  - § 293. Review of objections to verdict, findings, or judgment.
  - § 294. Review of sufficiency of evidence to sustain verdict, findings, or judgment.
  - § 295. Review of amount of recovery or relief awarded.
  - § 296. Review of decisions on motions after trial or judgment.
  - § 297. Review of decisions of intermediate courts.
  - § 298. Motion on grounds covered by exceptions or motion in arrest.
  - § 299. Review on direct bill of exceptions.
  - § 300. Necessity of timely motion.
  - § 301. Necessity of statement of grounds.
  - § 302. Sufficiency and scope of statement of grounds.
  - § 303. Authentication of statement of grounds.
  - § 304. Necessity of ruling or order on motion.
  - § 305. Necessity and sufficiency of exception to decision.
- (E) CASES AND QUESTIONS RESERVED OR CERTIFIED.**
- § 307. Nature and grounds of reservation or certification.
  - § 308. — Nature of questions in general.
  - § 309. — Constitutional questions.
  - § 310. — Novel or important questions.
  - § 311. — Division of opinion or dissent in lower court.
  - § 312. — Necessity of decision by trial court.
  - § 314. Time for reservation or certification.
  - § 315. Proceedings to procure certificate.
  - § 316. Requisites and sufficiency of reservation or certificate.

**V. Presentation and Reservation in Lower Court of Grounds of Review—**

Continued.

**(E) CASES AND QUESTIONS RESERVED OR CERTIFIED—Continued.**

- § 318. Verdict or judgment subject to opinion of appellate court.
- § 319. Exceptions ordered to be heard in appellate court in first instance.
- § 320. Report of case or of evidence for consideration by appellate court.

**VI. Parties.**

- § 321. Appellants or plaintiffs in error.
- § 322. — Proper or necessary parties in general.
- § 323. — Separate proceeding by one or more co-parties.
- § 324. — Summons and severance.
- § 325. — Joinder.
- § 326. Appellees, respondents, or defendants in error.
- § 327. — Proper or necessary parties.
- § 328. — Joinder.
- § 329. Intervention or addition of new parties.
- § 330. Transfer or devolution of interest.
- § 331. Death.
- § 332. — Before appeal or writ of error.
- § 333. — Pending appeal or writ of error.
- § 334. — Continuance or revival of proceedings.
- § 335. Designation and description.
- § 336. Defects, objections, and amendment.

**VII. Requisites and Proceedings for Transfer of Cause.****(A) TIME OF TAKING PROCEEDINGS.**

- § 337. Premature appeal or other proceeding.
- § 338. Nature and operation of limitations in general.
- § 339. Limitations applicable to particular proceedings.
- § 340. Limitations of review of particular questions.
- § 342. Separate proceeding by or against one or more co-parties.
- § 343. Commencement of period of limitation.
- § 344. — Completeness or finality of decision.
- § 345. — Effect of motion for new trial or rehearing.
- § 346. — Effect of motion to vacate or modify judgment or order.
- § 347. — Rendition or entry of judgment or order.
- § 348. — Service of notice or copy of judgment or order.
- § 349. Effect of disability or death of party.
- § 350. Fast bill of exceptions or writ of error.
- § 351. Taking and perfecting proceeding in time.
- § 352. Extension of time.
- § 353. — Judicial authority.
- § 354. — Consent of parties.
- § 355. Waiver of objections to delay.
- § 356. Effect of delay or failure to take proceedings.
- § 357. Relief in case of failure to proceed in time.

**(B) PETITION OR PRAYER, ALLOWANCE, AND CERTIFICATE OR AFFIDAVIT.**

- § 358. Necessity of allowance or leave.
- § 359. Authority of court or judge.
- § 360. Prayer and allowance in open court.

**VII. Requisites and Proceedings for Transfer of Cause—Continued.**

**(B) PETITION OR PRAYER, ALLOWANCE, AND CERTIFICATE OR AFFIDAVIT—Continued.**

- § 361. Petition, affidavit, or other application.
- § 362. Specification of errors.
- § 363. Grounds for allowance or refusal.
- § 364. Term or day to which appeal may be taken or writ made returnable.
- § 365. Order for appeal or writ of error.
- § 366. Certificate as to grounds.
- § 367. Affidavit of merits and good faith.
- § 368. Stipulation for judgment absolute on appeal from order granting new trial.

**(C) PAYMENT OF FEES OR COSTS, AND BONDS OR OTHER SECURITIES.**

- § 369. Payment of costs in lower court.
- § 370. Payment of fees on appealing.
- § 371. Payment of costs or fees for transcript or return.
- § 372. Necessity of security to perfect appeal or other proceeding.
- § 373. — In general.
- § 374. — Exemptions.
- § 375. Parties by and to whom security to be given.
- § 376. — Obligees.
- § 377. — Obligors.
- § 378. Sureties.
- § 379. — Necessity and number.
- § 380. — Competency.
- § 381. — Sufficiency and justification.
- § 382. Amount or penalty of bond or undertaking.
- § 383. Conditions of bond or undertaking.
- § 384. Form and contents of bond or undertaking.
- § 385. Execution of bond or undertaking.
- § 386. Approval of bond or undertaking.
- § 387. Delivery or filing and service of bond or undertaking.
- § 388. Deposit as security.
- § 389. Proceeding in forma pauperis.
- § 390. Amendment of bond or undertaking.
- § 391. Additional or new security.
- § 392. Waiver of security or of defects.
- § 393. Use of supersedeas bond as appeal bond.
- § 394. Bond or undertaking on review of two or more decisions.
- § 395. Effect of failure to give or defects in security.

**(D) WRIT OF ERROR, CITATION, OR NOTICE.**

- § 396. Necessity of appellate process or of notice.
- § 397. Process or notice on appeal in open court.
- § 398. Writ of error.
- § 399. — Issuance.
- § 400. — Form and requisites.
- § 401. — Service.
- § 402. — Return.
- § 403. — Defects, objections, and amendments.

**VII. Requisites and Proceedings for Transfer of Cause—Continued.****(D) WRIT OF ERROR, CITATION, OR NOTICE—Continued.**

- § 404. Citation or other process.
- § 405. — Issuance.
- § 406. — Form and requisites.
- § 407. — Service.
- § 408. — Return.
- § 409. — Defects, objections, and amendments.
- § 410. Scire facias to hear errors.
- § 411. Nature and method of notice in general.
- § 412. Authority to give notice.
- § 413. Parties entitled to notice.
- § 414. — Adverse parties.
- § 415. — Co-parties.
- § 416. Form and requisites of notice.
- § 417. — Sufficiency in general.
- § 418. — Decisions and proceedings included.
- § 419. — Descriptions of judgments or orders.
- § 420. — Specification of interlocutory or intermediate judgments or orders.
- § 421. — Specification of errors.
- § 422. — Defects, objections, and amendments.
- § 423. Service of notice.
- § 424. — Persons to be served.
- § 425. — Time for service.
- § 426. — Mode and sufficiency of service.
- § 427. — Return or proof of service.
- § 428. Filing notice and proof of service.
- § 429. Waiver of process or notice or of defects therein.
- § 430. Effect of failure to serve process or to give notice.

**(E) ENTRY, DOCKETING, AND APPEARANCE.**

- § 431. Necessity of entering or docketing cause.
- § 432. Time for entry or docketing.
- § 433. Sufficiency of entry.
- § 434. Necessity and requisites of appearance.
- § 435. Effect of appearance.

**VIII. Effect of Transfer of Cause or Proceedings Therefor.****(A) POWERS AND PROCEEDINGS OF LOWER COURT.**

- § 436. Transfer of jurisdiction in general.
- § 437. Force and effect of judgment or order appealed from.
- § 438. New trial or rehearing.
- § 439. Opening or vacating judgment or order.
- § 440. Amendment of proceedings.
- § 441. Perfecting and transmission of record.
- § 442. Collateral actions or proceedings.
- § 443. Property in controversy.
- § 444. Provisional remedies.
- § 445. — In general.
- § 446. — Attachment and garnishment.

**VIII. Effect of Transfer of Cause or Proceedings Therefor—Continued.****(A) POWERS AND PROCEEDINGS OF LOWER COURT—Continued.**

- § 447. — Injunction.
- § 448. — Receiver.
- § 449. Interlocutory appeals.
- § 450. Proceedings for review of part of judgment or order.
- § 451. Proceedings for review by one or more co-parties.
- § 452. Irregular or ineffectual proceedings for review.

**(B) JURISDICTION ACQUIRED BY APPELLATE COURT.**

- § 454. Effect of taking appeal or other proceeding.
- § 455. Time when jurisdiction attaches.
- § 456. Extent of jurisdiction.
- § 457. Effect of subsequent proceedings in court below.

**IX. Supersedeas or Stay of Proceedings.**

- § 458. Right to supersedeas or stay in general.
- § 459. Taking and perfecting appeal or other proceeding for review as condition.
- § 460. Operation of appeal or writ of error and necessity for security or allowance.
- § 461. Use of appeal or cost bond as supersedeas bond.
- § 462. Upon security.
- § 463. — Parties to whom security to be given.
- § 464. — Sureties.
- § 465. — Amount or penalty of bond or undertaking.
- § 466. — Conditions of bond or undertaking.
- § 467. — Form and contents of bond or undertaking.
- § 468. — Time of giving bond.
- § 469. — Execution of bond or undertaking.
- § 470. — Approval of bond or undertaking.
- § 471. — Delivery or filing and service of bond or undertaking.
- § 472. — Deposit as security.
- § 473. — Proceeding in forma pauperis.
- § 474. — Amendment of bond or undertaking.
- § 475. — Additional or new security.
- § 476. Upon allowance by court or judge.
- § 477. — Authority of court or judge.
- § 478. — Application and proceedings thereon.
- § 479. — Grounds for allowance.
- § 480. — Security or other conditions.
- § 481. — Order for supersedeas or stay.
- § 482. Modifying or vacating.
- § 483. Operation and effect pending further appeal.
- § 484. Scope and effect as stay.
- § 485. — Proceeding in cause in general.
- § 486. — Arrest and bail.
- § 487. — Attachment and garnishment.
- § 488. — Injunction.
- § 489. — Appointment and proceedings of receiver.
- § 490. — Other actions or proceedings.



**IX. Supersedeas or Stay of Proceedings—Continued.**

§ 491. Proceedings in cause upon giving security for restitution.

§ 492. Proceedings in violation of supersedeas or stay.

**X. Record and Proceedings Not in Record.****(A) MATTERS TO BE SHOWN BY RECORD.**

§ 493. Jurisdiction of lower court.

§ 494. Nature and form of decision.

§ 495. Grounds of decision.

§ 496. Proceedings sustaining judgment or order.

§ 497. Grounds of review.

§ 498. Presentation and reservation of grounds of review.

§ 499. — Questions and objections in general.

§ 500. — Rulings by lower court.

§ 501. — Exceptions.

§ 502. — Motions for a new trial.

§ 503. Jurisdiction of appellate court.

§ 504. Taking and perfecting of appeal or other proceeding for review.

§ 505. — Time of taking proceedings.

§ 506. — Sufficiency of proceedings in general.

§ 507. — Allowance or leave.

§ 508. — Security.

§ 509. — Process or notice.

§ 510. Filing of papers part of record.

§ 511. Making and filing of bill of exceptions, case, or statement.

§ 512. Proceedings of intermediate courts.

§ 513. Several appeals or proceedings for review, and cross-appeals.

§ 514. Successive appeals or proceedings for review.

§ 515. Incorporating evidence and stenographer's report.

**(B) SCOPE AND CONTENTS OF RECORD.**

§ 516. Proceedings included in general.

§ 517. Process and appearance.

§ 518. Pleadings and proceedings relating thereto.

§ 519. Stipulations.

§ 520. Interlocutory motions, orders, and judgments.

§ 521. Evidence.

§ 522. — In general.

§ 523. — Depositions and affidavits.

§ 524. — Documents.

§ 525. Instructions.

§ 526. Proceedings on reference.

§ 527. Verdict, findings, or decision.

§ 528. Proceedings on motion in arrest, for new trial, or rehearing.

§ 529. Judgment or decree.

§ 530. Proceedings after judgment.

§ 531. Record on review of interlocutory decision.

§ 532. Record on review of decision of intermediate court.

§ 533. Opinion of lower court.

§ 534. Proceedings for appeal or other review.

§ 535. Bill of exceptions, case, or statement.

**X. Record and Proceedings Not in Record—Continued.**

**(B) SCOPE AND CONTENTS OF RECORD—Continued.**

- § 536. — As part of record in general.
- § 537. — Necessity of timely making and filing in lower court.
- § 538. Special orders as to contents of record.
- § 539. Stipulations as to contents of record.
- § 540. Papers referred to in record.
- § 541. Official certificates or statements accompanying transcript.
- § 542. Affidavits accompanying or supplementing transcript.
- § 543. Effect of loss or destruction of record.

**(C) NECESSITY OF BILL OF EXCEPTIONS, CASE, OR STATEMENT OF FACTS.**

- § 544. Decisions not otherwise reviewable.
- § 545. Proceedings not part of record.
- § 546. Presentation of grounds of review.
- § 547. — Facts not shown by record in general.
- § 548. — Evidence.
- § 549. Presentation of exceptions taken.
- § 550. Changing case into bill of exceptions or special verdict.
- § 551. Necessity of case or statement in addition to bill of exceptions.
- § 552. Scope and sufficiency of case, statement, or certificate of evidence.
- § 553. Substitutes.
- § 554. Effect of failure to make bill, case, or statement.
- § 555. Effect of striking out bill, case, or statement.

**(D) CONTENTS, MAKING, AND SETTLEMENT OF CASE OR STATEMENT OF FACTS.**

- § 556. Purpose and functions.
- § 557. Duty to make.
- § 558. Parties participating.
- § 559. Matters included.
- § 560. Incorporating and abridging evidence in general.
- § 561. Incorporating stenographer's report.
- § 562. Incorporating matters of record, exhibits, and other documents.
- § 563. Form and arrangement.
- § 564. Time for making and filing or service.
- § 565. Filing and serving proposed case or statement.
- § 566. Proposed amendments or counter case or statement.
- § 567. Time for settlement.
- § 568. Notice of and proceedings for settlement.
- § 569. Settlement and signing.
- § 570. Resettlement.
- § 571. Proceedings to compel settlement and signing.
- § 572. Filing in lower court.
- § 573. Making and filing agreed case or statement.
- § 574. Procuring and filing certificate of evidence.
- § 575. Certificate as to correctness of stenographer's report.
- § 576. Report by trial judge of facts found.
- § 577. Unauthorized alterations.
- § 578. Supplemental case, statement, or certificate.

**(E) ABSTRACTS OF RECORD.**

- § 579. Purpose and functions.

**X. Record and Proceedings Not in Record—Continued.****(E) ABSTRACTS OF RECORD—Continued.**

- § 580. Necessity and duty to make.
- § 581. Matters included.
- § 582. Setting out or abridging matters of record.
- § 583. References to record.
- § 584. Form and arrangement.
- § 585. Additional or counter abstract of appellee.
- § 586. Scope and sufficiency.
- § 587. Agreed abstract.
- § 588. Brief of evidence.
- § 589. Paper books.
- § 590. Amended and supplemental abstracts or briefs.
- § 591. Substitutes.
- § 592. Effect of failure to make abstract or brief.

**(F) MAKING, FORM, AND REQUISITES OF TRANSCRIPT OR RETURN.**

- § 593. Purpose and functions.
- § 594. Necessity.
- § 595. Necessity for separate transcript on separate appeals and cross-appeals.
- § 596. Duty to make.
- § 597. Record or part thereof included.
- § 598. Original papers.
- § 599. Papers not of record or on file.
- § 600. Incorporating bill of exceptions.
- § 601. Incorporating case or statement of facts.
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Arbitrators, see "Arbitration and Award," § 73.

Assessment for public improvements, see "Drains," § 82; "Municipal Corporations," § 511.

Assessment for taxation, see "Taxation," § 495.

Assessment for taxation under internal revenue laws, see "Internal Revenue," § 25.

Audit and settlement of accounts of county officers, see "Counties," § 94.

Auditing boards or officers, see "Counties," § 205; "Municipal Corporations," § 1014; "States," § 183; "Towns," § 62.

Board of medical examiners, see "Physicians and Surgeons," § 3.

Board of review of tax assessments, see "Taxation," § 493.

Boards of equalization, see "Taxation," §§ 449, 450.

Boards of health, see "Health," § 11.

Boards of registration or certification, on application for authority to practice medicine, dentistry, or surgery, see "Physicians and Surgeons," § 5.

Canvassers of election returns, see "Elections," § 263.

Commissioner of patents, see "Patents," § 113.

Commissioners or viewers in proceedings to establish highway, see "Highways," §§ 58, 59.

County board, allowance of public aid to agricultural society, see "Agriculture," § 3.

County board, in proceedings for alteration of school districts, see "Schools and School Districts," § 39.

County boards, see "Counties," §§ 58, 196, 205.

County court, of decision on petition for establishment of wharf, see "Wharves," § 1.

County court, on application for innkeeper's license, see "Innkeepers," § 4.

County-line commissioners, see "Counties," § 8.

County superintendent of schools, see "Schools and School Districts," §§ 39, 48.

Drainage proceedings, see "Drains," § 36.

Election officers, see "Elections," §§ 45, 154.

In patent office, see "Patents," §§ 111, 113.

Municipal authorities, see "Municipal Corporations," § 104.

Municipal councils, see "Municipal Corporations," § 104.

Of mayor in appointing election officers, see "Elections," § 51.

Order of district council directing removal of obstructions on highway, see "Highways," § 157.

Railroad commissioners, see "Railroads," § 9.

Registers and receivers of land office, see "Public Lands," §§ 104, 152.

Removal of county seat, see "Counties," § 34.

Removal of municipal employes, see "Municipal Corporations," § 218.

Removal of officer, see "Officers," § 72.

Removal of policemen, see "Municipal Corporations," § 185.

Representatives of political parties, see "Elections," § 152.

Revocation of certificate or license of physician, see "Physicians and Surgeons," § 11.

School boards and officers, see "Schools and School Districts," §§ 39, 47, 61, 141.

School district meetings, see "Schools and School Districts," § 50.

Settlement of fee accounts of county officers, see "Counties," § 80.

State land commissioners, see "Public Lands," § 154.

State land officers, see "Public Lands," § 185.

Tax assessors, see "Taxation," §§ 320, 495.

Transfer of liquor license, see "Intoxicating Liquors," § 103.

Transfer of location of liquor business, see "Intoxicating Liquors," § 104.

## I. NATURE AND FORM OF REMEDY.

### *Cross-References.*

Appeals from justices' courts, see "Justices of the Peace," § 139.

Bankruptcy proceedings, see "Bankruptcy," § 449.

Condemnation proceedings, see "Eminent Domain," § 251.

Criminal prosecutions, see "Criminal Law," §§ 1004-1015.

Election contests, see "Elections," § 305.

Establishment of drains, see "Drains," § 36.

Habeas corpus proceedings, see "Habeas Corpus," § 113.

Probate proceedings, see "Wills," § 356.

Proceedings for sale of real estate of decedent, see "Executors and Administrators," § 358.

Review by United States Circuit Court of Appeals, see "Courts," § 405.

Review of mandamus proceedings, see "Mandamus," § 187.

Review of accounting of executor or administrator, see "Executors and Administrators," § 510.

Review of decisions of municipal courts, see "Courts," § 190.

Review of divorce decree, see "Divorce," § 175.

### § 1. Origin, nature, and scope of remedies in general.

#### *Cross-Reference.*

Trial *de novo*, see post, § 892.

(a) The right of appeal from courts of equity is wholly statutory.—*Peoples v. Ault*, 117 Md. 681, 84 Atl. 60.

(b) When an order of a court assuming to act under the special jurisdiction conferred by a statute goes beyond the scope of the court's limited authority, an appeal lies, so far as the order is unauthorized, though the statute makes no provision for an appeal.—*Travers v. Dean*, 98 Md. 72, 56 Atl. 388.

(c) The right of appeal is statutory, and does not exist except where expressly given, and cannot be extended to cases not within the statute.—*Barth v. Rosenfeld*, 36 Md. 604; *Dillon v. Connecticut Mut. Life Ins. Co.*, 44 Md. 394.

(d) Any interference with the right of appeal, wherever it exists, must be upon strong grounds, and a clear manifestation on the part of the legislature that they designed to withdraw it.—*Williams v. Williams*, 7 Gill 302.

(e) The right to an appeal or writ of error cannot be refused, however indifferent or baseless the demand on the merits may be.—*Thompson v. McKim*, 6 H. & J. 302.

(f) It is the constitutional right of every citizen to have his case reviewed, in one form or another, by a court of error.—*Ringgold's Case*, 1 Bland 5.

### § 2. Statutory provisions and remedies.

#### *Cross-References.*

Statutes governing time for appeal, see post, § 338.

Effect of partial invalidity of statute, see "Statutes," § 64.

(a) Where an order of a court assuming to act under the special jurisdiction conferred by a statute goes beyond the scope of the court's limited authority, an appeal lies, so far as the order is unauthorized, though the statute makes no provision for an appeal.—*Travers v. Dean*, 98 Md. 72, 56 Atl. 388.

(b) The statute allowing an appeal to the Court of Appeals for reviewing judgments of inferior courts does not authorize an appeal to be taken or entertained in a case

where a writ of error was not available at common law.—*Goldschmid v. Meline*, 86 Md. 370, 38 Atl. 783.

(c) The right of appeal is statutory, and does not exist except where expressly given, and cannot be extended to cases not within the statute.—*Barth v. Rosenfeld*, 36 Md. 604; *Dillon v. Connecticut Mut. Life Ins. Co.*, 44 Md. 394.

(d) Any interference with the right of appeal, wherever it exists, must be upon strong grounds, and a clear manifestation on the part of the legislature that they designed to withdraw it.—*Williams v. Williams*, 7 Gill 302.

### § 3. Proper mode of review.

#### *Cross-References.*

Direct bill of exceptions, see post, § 299.

Fast bill of exceptions or writ of error, see post, § 350.

Persons entitled to review as dependent on mode of review, see post, § 152.

Re-entering cause as proceeding in error on dismissal of appeal, see post, § 14.

Scope and extent of review as dependent on mode of review, see post, §§ 858-861.

Scope of decision and extent of relief dependent on mode of review, see post, §§ 1111-1114, 1116-1121.

Practice in United States courts, see "Courts," §§ 356, 387, 388.

### § 4.—Appeal.

#### *Cross-Reference.*

Scope and extent of review, see post, § 858.

(a) An appeal lies in any civil case where a writ of error lies, and, as a general rule, in any civil case where the court below proceeds under its usual and general jurisdiction.—*Swann v. Town of Cumberland*, 8 Gill 150.

(b) Unless by express provision of some act of assembly, an appeal will not lie in any case in which a writ of error would not lie.—*Savage Mfg. Co. v. Owings*, 3 Gill 497.

### § 5.—Writ of error.

#### *Cross-References.*

Form of remedy as affected by amount in controversy, see post, § 46.

Scope and extent of review, see post, § 859.

#### *Annotation.*

How and when questions must be raised and decided in a state court in order to make a case for a writ of error from the Supreme Court of the United States.—63 L. R. A. 33, note.



What adjudication of state courts can be brought up for review in the Supreme Court of the United States by writ of error to those courts.—62 L. R. A. 513, note.

(a) A writ of error has no more extensive range or greater effect than an appeal, both proceedings being merely different modes of obtaining review of judgments of courts of inferior jurisdiction in an appellate tribunal.—Board of County Com'rs of Harford County v. Jay, 122 Md. 324, 89 Atl. 715.

(b) Unless by express provision of some act of assembly, an appeal will not lie in any case in which a writ of error would not lie.—Savage Mfg. Co. v. Owings, 3 Gill 497.

### § 6.—Exceptions.

#### *Cross-Reference.*

Presentation and reservation in lower court of grounds of review, see post, §§ 169, et seq.

### § 7.—Writ of supersedeas.

### § 8.—Reservation or certification of cases or questions.

#### *Cross-References.*

Right to remedy in general, see post, §§ 307-320.

Scope and extent of review, see post, § 861.

From United States Circuit Court of Appeals to Supreme Court, see "Courts," § 384.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 9. Existence of other remedy in lower court.

#### *Cross-References.*

Estoppel by pursuing other remedy, see post, § 165.

Grant of new trial pending appeal as ground of dismissal, see post, § 790.

Remedy by appeal as barring equitable relief against judgment, see "Judgment," § 407.

Remedy by appeal as barring motion for new trial, see "New Trial," § 5.

Remedy by appeal as barring motion for venire de novo, see "Trial," § 363.

Remedy by appeal as barring motion to strike out judgment, see "Judgment," § 338.

Remedy by appeal as barring motion to vacate default, see "Judgment," § 135.

Remedy by appeal as barring motion to vacate judgment, see "Judgment," § 338.

Remedy by appeal as barring motion to vacate order, see "Motions," § 59.

Right of remedy by appeal as barring renewal of motion, see "Motions," § 42.

(a) An order allowing receivers of a corporation to appeal from a foreign judgment against it will not be modified, on appeal therefrom, to give protection to the judgment creditor, before he has applied to the circuit court for such protection.—Beilman v. Poe, 120 Md. 444, 88 Atl. 131.

(b) Where the orphans' court, under statutory authority, has appointed a guardian for a minor whose father or mother is living at the time of the appointment, without due notice to the father, or mother if there be no father living, the remedy of the party aggrieved is not by an appeal from the order of the court, but he may by petition or other proceeding, in the same court, attack the order itself.—Redman v. Chance, 32 Md. 42.

(c) Upon a verdict against the evidence, a motion for a new trial, and not an appeal, is the proper remedy.—Morrison v. Whiteside, 17 Md. 452, 79 Am. Dec. 661.

### § 10. Existence of other remedy for review.

#### *Cross-References.*

Estoppel by pursuing other remedy, see post, § 165.

Existence of remedy by appeal or error as affecting right to mandamus, see "Mandamus," § 4.

(a) The improper refusal of a judge of the circuit court to sign a bill of exceptions cannot be corrected by appeal to the Court of Appeals.—Marsh v. Hand, 35 Md. 123; Carey v. Merryman, 46 Md. 89; Donohue v. Shedrick, Ibid. 226.

(b) A writ of error will not lie to the probate or orphans' court from the general court, but a certiorari will.—Bradford v. Richardson, 3 H. & McH. 348.

### § 11. Right to different remedies in same case.

#### *Cross-References.*

Consolidation, see post, § 816.

Entering case as on writ of error when too late as appeal, see post, § 357.

Necessity for request for redocketing as writ of error on dismissal of appeal, see post, § 1096.

Re-entering appeal as writ of error, see post, § 14.

Waiver of objection to redocketing appeal as writ of error by appearance, see post, § 435.

(a) Code 1888, art. 23, § 255, provides that the charter of a corporation may be forfeited for misuse, etc., of its franchises, on petition filed by the state's attorney. Section 262 provides that, from a judgment or determination on such petition, either party may appeal, subject to regulations of the Court of Appeals. Article 5, § 66, provides that the appeal shall be taken within 30 days from the date of the judgment or determination appealed from. Article 23, § 260, provides that, if on the hearing the court shall be of opinion that no cause of forfeiture is shown, it shall dismiss the petition. *Held*, that there being a mode prescribed by statute for bringing such case to the Court of Appeals, a petition in error to the overruling of a demurrer to the answer would not lie (see Code 1911, art. 23, §§ 82-86).—*State v. Easton S., L. & M. Club*, 72 Md. 297, 20 Atl. 242.

## § 12. Election between remedies.

### Cross-Reference.

Recourse to appeal as preventing remedy by certiorari, see "Certiorari," § 7.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 13. Pendency of another proceeding.

### Cross-References.

Effect of decision in another action, see post, § 1100.

Of motion for new trial as affecting finality of judgment, see post, § 76.

Contemporaneous proceedings in United States Supreme Court and Circuit Court of Appeals, see "Courts," § 405.

(a) A bill to set aside certain deeds as being in fraud of creditors was dismissed by the court after a hearing. Over two months later complainant filed a petition to reverse the former decree and permit the taking of further testimony, or for permission to dismiss the former bill and file another. Over seven months later the petition was dismissed by the court, and complainant appealed from the decree and also from the order dismissing the petition for rehearing. *Held*, that the appeal from the decree could not be entertained since it was not taken within nine months.—*Jacobs v. Bealmear*, 41, Md. 484. (For present law see Code, art. 5, § 32.)

## § 14. Successive appeals and cross-appeals or other proceedings.

### Cross-References.

Consolidation, see post, § 816.

Determination and disposition of causes, see post, §§ 1104, 1105.

Liabilities on bonds and undertakings, see post, § 1233.

Necessity for separate transcript, see post, § 595.

Order of hearing, see post, § 820.

Proceedings after decision of appellate court, see post, § 118.

Requisites of record, see post, § 514.

Review on subsequent appeal, see post, §§ 1096-1099.

Taking second appeal as abandonment of prior proceedings, see post, § 805.

Time for appeal or writ of error after appeal dismissed, see post, § 338.

In election contest, see "Elections," § 305.

Mandamus to compel certification of bill of exceptions to judgment entered in conformity to mandate on former appeal, see "Exceptions, Bill of," § 53.

Use of same bill of exceptions in successive appeals, see "Exceptions, Bill of," § 28.

Assignment of cross-errors, see post, § 747.

Entering or docketing cause on cross-appeals, see post, § 431.

Persons entitled to take cross-appeal, see post, § 138.

Right to assign cross-errors, see post, § 747.

Time for taking cross-appeal, see post, § 338.

Waiver of objections to cross-appeal by appearance, see post, § 435.

(a) A party cannot be allowed to prosecute different and successive appeals on the same state of record, unless there have been new proceedings since the last appeal, and then only in respect to questions raised on or by such new proceedings.—*Smith v. Shaffer*, 50 Md. 132.

(b) Act 1864, c. 322 (Code, art. 5, § 41), authorizes the court from which an appeal is taken to strike out the entry of the appeal where, through the negligence or omission of appellant, the record is not sent up to the court within the required time after the appeal is entered, and further provides that "thereafter no further appeal or writ of error shall be allowed." *Held*, that the rule of the Court of Appeals prescribing the time within which appeals may be entered, does not allow another appeal embracing the same subject-matter, where the entry of the first appeal has been stricken out, even

though the second appeal be entered within the time allowed by such rule.—*Meloy v. Squires*, 42 Md. 378.

(c) Where an appeal is prayed and allowed, and then withdrawn, the party is not precluded, if nothing be done, from afterwards prosecuting an appeal, providing he does so within the time allowed by law for appeals to be taken.—*Hay v. Jenkins*, 28 Md. 564. [*Cited and annotated in 29 L. R. A. (N. S.) 28, on right to appeal from unfavorable, while accepting favorable, part of decree, judgment or order.*]

(d) If an appeal be prayed and allowed, and then withdrawn by the appellant's order, he is not thereby precluded from afterwards prosecuting an appeal in the same cause, provided it is done within the time limited by law.—*Ward v. Hollins*, 14 Md. 158.

(e) An appellant must bring up on his first appeal all questions then decided below, and he cannot by a second appeal or writ of error, without any further proceedings below upon which to base it, bring up a question which he might have brought up on his first appeal.—*Bridendolph v. Zeller*, 5 Md. 58.

(f) Where a case is twice appealed, facts which occurred before the first decree in the court below must be presented before the original hearing in the Court of Appeals, and cannot be presented on the second appeal, since parties must indicate their rights in due season, and in proper order.—*Young v. Frost*, 1 Md. 377.

### § 15. Joinder of proceedings, and double appeals or other proceedings.

#### Cross-References.

Splitting proceedings on appeal from part of judgment or order, see post, § 122.  
Appeal from decisions of county board, see "Counties," § 58.

(a) Where an order was allowed on June 4th dismissing exceptions to a ratification of a resale of mortgaged property, and on the same day the resale was confirmed, since the two orders, though separate, covered the same transaction, and could have been signed together, an appeal "from the order of June 4th" will be treated as taken from

both orders.—*Werner v. Clark*, 108 Md. 627, 71 Atl. 305.

### § 16. Separate appeals in related causes.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## II. NATURE AND GROUNDS OF APPELLATE JURISDICTION.

#### Cross-References.

Dismissal for want of jurisdiction in general, see post, § 782.

Dismissal on court's own motion for want of jurisdiction, see post, § 792.

Motion for new trial as prerequisite to jurisdiction, see post, § 281.

Necessity that jurisdiction appear of record, see post, § 503.

Scope and extent of review, see post, §§ 836-867.

Want of jurisdiction as affecting power to enter judgment on supersedeas bond, see post, § 1236.

Appeals from justices' courts, see "Justices of the Peace," § 141.

Collateral attack on jurisdiction of appellate court, see "Judgment," § 495.

Condemnation proceedings, see "Eminent Domain," § 252.

Criminal prosecutions, see "Criminal Law," §§ 1017-1020.

Election contests, see "Elections," § 305.

Habeas corpus proceedings, see "Habeas Corpus," § 113.

Highway proceedings, see "Highways," § 58.

Insolvency proceedings, see "Insolvency," § 173.

Probate proceedings, see "Wills," § 357.

Proceedings for establishment of drains, see "Drains," § 36.

Proceedings for sale of real estate of decedent, see "Executors and Administrators," § 358.

Review of decisions of county board allowing or disallowing claims, see "Counties," § 205.

Validity of agreement ousting appellate court of jurisdiction on appeal, see "Contracts," § 127.

### § 17. Nature and source.

### § 18. Grounds and extent in general.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 19. Existence of actual controversy.

#### Cross-References.

Want of actual controversy as ground for affirmance, see post, § 1138.

Want of actual controversy as ground for dismissal, see post, § 781.

## § 20. Jurisdiction of lower court.

### *Cross-References.*

Appealability of void judgments, see post, § 112.

Necessity that jurisdiction appear of record, see post, § 498.

Sufficiency of record to present question for review, see post, § 674.

Election contest, see "Elections," § 305.

(a) Though the judgment of the circuit court on appeal from a justice is ordinarily final, an appeal lies to the Court of Appeals where the justice, and consequently the circuit court, are without jurisdiction, and error in the latter tribunal in rejecting evidence showing want of jurisdiction in the justice is therefore reviewable.—Darrell v. Biscoe, 94 Md. 684, 51 Atl. 410.

(b) Where a cause was removed from the court of chancery to the circuit court, under act 1853, c. 123, providing for such removals, the jurisdiction of the former passed to the latter court; and an appeal would lie in the circuit court from an order or decree in the cause passed by the chancellor, the same as though no removal had taken place.—Dugan v. Hollins, 11 Md. 41.

## § 21. Consent of parties.

(a) Even though an appeal does not lie to the Court of Appeals from an order of the Baltimore City Court overruling a motion to quash proceedings, where the right of appeal was not questioned, an appeal to determine whether property improved in the annex portion of Baltimore city is assessable for benefits will be decided; the question being one of public interest.—Lauer v. City of Baltimore, 110 Md. 447, 73 Atl. 162.

## § 22. Waiver of objections.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 23. Determination of questions of jurisdiction in general.

### *Cross-Reference.*

By United States Circuit Court of Appeals, see "Courts," § 405.

(a) The question whether an appeal lies in any given case is a question for the decision of the appellate court alone.—Thompson v. McKim, 6 H. & J. 302; Chesapeake Bank v. McClellan, 1 Md. Ch. 328; In re Colvin, 3

Md. Ch. 278; Hough v. Kelsey, 19 Md. 451; Lester v. Howard, 24 Md. 233.

## III. DECISIONS REVIEWABLE.

### *Cross-References.*

District courts in cities, see "Courts," § 194.

Criminal prosecutions, see "Criminal Law," §§ 1022, 1023.

### (A) COURTS AND OTHER TRIBUNALS SUBJECT TO REVIEW.

### *Cross-References.*

By court of appeals of District of Columbia, see "Courts," § 445.

By United States courts, see "Courts," §§ 391, 405.

In admiralty, see "Admiralty," § 103.

Justices' courts, see "Justices of the Peace," §§ 143-148.

Municipal courts, see "Courts," §§ 190, 214, 217, 227, 229, 237, 253.

State courts subject to review by United States Supreme Court, see "Courts," § 392.

United States district court, see "United States," § 146.

## § 24. Judicial character of tribunal.

## § 25. Courts of original jurisdiction in general.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 26. County courts.

### *Cross-Reference.*

See "Courts," §§ 185, 213.

(a) A judgment of the county court finding defendant guilty of charging and receiving greater fees as sheriff than was allowed by law held to be conclusive.—Jenifer v. Lord Proprietary, 1 H. & McH. 535.

## § 27. Municipal and other local courts.

### *Cross-References.*

See "Courts," §§ 214, 217, 227, 229, 237, 253.

Retroactive operation of statutes, see ante, § 2.

District courts in cities, see "Courts," § 194.

For proper proceedings to render proceeding before justice of the peace reviewable in Court of Appeals, see "Justices of the Peace."

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 28. Probate courts.

### *Cross-Reference.*

See "Courts," § 202.

(a) There is no limitation of the right of appeal from the orphans' court in this State by reason of the amount involved.—Gephart v. Strong, 20 Md. 522; Valentine v. Same, Ibid. 525.

§ 29. (Omitted from the classification used herein.)

§ 30. Judges and judicial officers.

§ 31. Special tribunals, boards, and officers exercising judicial functions.

**Cross-Reference.**

From decision of city council on necessity of railroad crossing, see "Railroads," § 97.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 32. Intermediate courts.

**Cross-References.**

Determination and disposition of cause, see post, § 1163.

Jurisdiction of trial court, see ante, § 20.

Scope and extent of review, see post, §§ 1080-1095.

For proper proceedings to render proceeding of justice of the peace reviewable in the Court of Appeals, see "Justices of the Peace."

(a) Under Code, art. 5, § 85, a judgment of the circuit court, rendered on an appeal from county commissioners, is not reviewable on a further appeal to the Court of Appeals, except on a jurisdictional question.—Board of County Com'rs of Harford County v. Jay, 122 Md. 324, 89 Atl. 715.

(b) No appeal lies from a judgment of the circuit court affirming a judgment of a justice of the peace, unless it appears that the justice rendering the judgment, and the circuit court affirming it, were without jurisdiction of the case.—Smith Premier Typewriter Co. v. Westcott, 112 Md. 146, 75 Atl. 1052. [Cited and annotated in 34 L. R. A. (N. S.) 665, on waiver of failure of, or defects in, service, by appeal to courts where trial must be de novo.]

(c) An appeal lies from a judgment of the circuit court against a corporation rendered on appeal from a judgment of a justice of the peace against it, where the summons was against an individual, followed by the word "agent," and not against the corporation, and where the corporation did not vol-

untarily appear except to object to the jurisdiction because the circuit court had no jurisdiction over the person and could not validly render the judgment.—Smith Premier Typewriter Co. v. Westcott, 112 Md. 146, 75 Atl. 1052. [Cited and annotated in 34 L. R. A. (N. S.) 665, on waiver of failure of, or defects in, service, by appeal to court where trial must be de novo.]

(d) No appeal lies to the Court of Appeals from the action of the circuit court on appeal from a justice of the peace if the justice had jurisdiction.—Benton v. Stokes, 109 Md. 117, 71 Atl. 532.

(e) The circuit court having authority to entertain an appeal from a justice of the peace on the question of jurisdiction as well as on other grounds, its decision is not subject to review.—Judefind v. State, 78 Md. 510, 28 Atl. 405, 22 L. R. A. 721.

(f) The judgment of an appellate court upon an appeal from a justice of the peace is final when within the jurisdiction of the court. If it be not within the jurisdiction of the court, it is not final, and an appeal therefrom lies to this court.—Herzberg v. Adams, 39 Md. 309; Randle v. Sutton, 43 Md. 64; Cole v. Hynes, 46 Md. 181; Baltimore & O. R. Co. v. Waltemyer, 47 Md. 328; Burrell v. Lamm, 67 Md. 580, 11 Atl. 56; Judefind v. State, 78 Md. 510, 28 Atl. 405, 22 L. R. A. 721.

(g) The Court of Common Pleas in the City of Baltimore had jurisdiction, under act 1852, c. 239, § 3, of appeals from judgments of justices of the peace, and their judgments, though erroneous, were conclusive thereof.—Hough v. Kelsey, 19 Md. 451.

(h) The judgment of a county court on an appeal from an inferior tribunal is not subject to review.—Swann v. Town of Cumberland, 8 Gill 150.

(i) The right of appeal, given by act 1785, c. 87, § 6 (Code, art. 5, § 2), is confined to judgments of courts of law in civil suits, actions, or prosecutions originating therein, and does not extend to judgments rendered by the court when acting as an appellate tribunal, or when exercising a quasi appellate jurisdiction.—Crockett v. Parke, 7 Gill 237.

**(B) NATURE OF SUBJECT-MATTER  
AND CHARACTER OF PARTIES.**

**Cross-References.**

Determination of questions of jurisdiction, see ante, § 23.

Appeals from justices' courts, see "Justices of the Peace," § 144.

Nature of decisions of state courts reviewable by United States Supreme Court, see "Courts," § 394.

**§ 33. Constitutional questions in general.**

**Cross-Reference.**

Courts invested with appellate jurisdiction, see "Courts," §§ 213, 219, 220, 222, 223, 224.

(a) An order adjudicating a right asserted under the constitution of the State is appealable, though not final in its nature.—*Condon v. Gore*, 89 Md. 230, 42 Atl. 900.

(b) An order passing on the sufficiency of the demand for a jury trial is appealable, as involving a constitutional right.—*Condon v. Gore*, 89 Md. 230, 42 Atl. 900.

**§ 34. Validity of statutes or ordinances.**

**Cross-Reference.**

See "Courts," §§ 213, 219, 220, 222, 224, 240, 247, 250, 151.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 35. Franchises and matters of public interest.**

**Cross-Reference.**

See "Courts," §§ 213, 219, 220.

(a) Under Acts 1906, p. 413, c. 257, amending the charter of the Cumberland & Pennsylvania Railroad Company, and providing that the mode of proceeding for a forfeiture of its charter for violation of its provisions shall be the same as is now provided by the General Laws of the state in such cases, and providing that, after the decree of forfeiture has been passed, such proceedings shall be had as are now provided under the General Laws of the state in such cases, and Code of 1904, art. 23, § 374, providing that either party may appeal from any judgment or determination of the court had on petitions for forfeiture of corporate charters, an appeal may be taken from an order dismissing a petition for the forfeiture of the charter of the Cumberland & Pennsylvania Railroad Company under the

act of 1906.—*State v. Cumberland & P. R. Co.*, 105 Md. 478, 66 Atl. 458. (See Code 1911, art. 23, §§ 82, *et seq.*)

**§ 36. Revenue.**

**Cross-Reference.**

See "Courts," §§ 219, 224, 247.

(a) Code, art. 81, § 183, which declares the judgment of the orphans' court to be final and conclusive, applies only to the proportion of the tax which it is the duty of the court to assess among the parties interested in the estate; and an appeal may be taken from a decision of that court upholding the constitutionality of the collateral inheritance tax.—*Tyson v. State*, 28 Md. 577.

**§ 37. States, political divisions, or officers as parties.**

**Cross-References.**

See "Courts," § 219.

Right to review decision or claim against state, see "States," § 183.

**§ 38. Title to real property.**

**Cross-Reference.**

See ante, § 27. Courts invested with appellate jurisdiction, see "Courts," §§ 212, 213, 219, 220, 222, 223, 224, 231, 237, 247.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 39. (Omitted from this title in the classification used herein.)**

**§ 40. Probate cases, and claims against decedents' estates.**

**Cross-Reference.**

See "Courts."

(a) The language of the act of assembly that "any person who may conceive him or herself aggrieved by any judgment, decree, decision, or order of the orphans' court shall have the liberty of appealing," etc., gives an appeal from any decision of the orphans' court prior to a final decision, to have a plenary proceeding directed, and an issue sent to a court of law for trial.—*Barroll v. Reading*, 5 H. & J. 175. (See Code, art. 5, §§ 60, *et seq.*)

**§ 41. Nature or form of action or proceeding.**

(a) The approval of a claim for attorney's fees by the circuit court being a special

power conferred by statute, and there being no provision for an appeal, propriety of the court's action cannot be reviewed by the Court of Appeals.—*Anne Arundel County Com'rs. v. Melvin*, 107 Md. 533, 69 Atl. 256.

(b) When a special limited jurisdiction is conferred on an inferior court, there can be no appeal, unless a right to appeal is specifically provided; and, if so provided, it must be strictly pursued.—*Wilmington & S. R. Co. v. Condon*, 8 G. & J. 443; *Savage Mfg. Co. v. Owings*, 3 Gill 497; *Carter v. Dennison*, 7 Gill 157; *Williams v. Williams*, *Ibid.* 302; *Swann v. City of Cumberland*, 8 Gill 150; *Webster v. Cockey*, 9 Gill 92; *Lammott v. Maulsby*, 8 Md. 5; *Baltimore & H. Turnpike Co. v. Northern Cent. Ry. Co.*, 15 Md. 193; *Meyer v. Steuart*, 48 Md. 423; *Margraff v. Cunningham*, 57 Md. 585; *Wells v. Thomas*, 72 Md. 26, 19 Atl. 118; *Francis v. Weaver*, 76 Md. 457, 25 Atl. 413; *Gadd v. County Com'rs of Anne Arundel Co.*, 82 Md. 646, 33 Atl. 433.

(c) An appeal does not lie to the Court of Appeals from a judgment of the circuit court on appeal from an order of the county commissioners dismissing a petition for the abatement of an assessment.—*Gadd v. Commissioners of Anne Arundel County*, 82 Md. 646, 33 Atl. 433.

(d) Under Code, art. 72, § 47, providing, in regard to the appropriation of waters for bedding oysters, that, if the appropriator be charged with wrongfully locating a natural bed of oysters, the question may be submitted to the circuit court, whose decision, after notice to parties interested, "shall be conclusive evidence" in regard to the title to the waters appropriated, the jurisdiction of the court being a special jurisdiction, and no appeal being expressly granted, its decision is not appealable.—*Jackson v. Bennett*, 80 Md. 76, 30 Atl. 612.

(e) A proceeding to enforce a penalty for failure to keep a toll road in repair is special, and not appealable, in the absence of a provision for appeal in the statute.—*Francis v. Weaver*, 76 Md. 457, 25 Atl. 413.

(f) No appeal will lie from an order of the circuit court deciding what are the legal

expenses attending the sale of real estate for taxes by authority of the treasurer of Anne Arundel county, under Laws 1884, c. 462, such law being a special act applying to that county only, and giving no right of appeal.—*Wells v. Thomas*, 72 Md. 26, 19 Atl. 118.

(g) By the express provision of the Code, art. 47, § 31, an appeal lies from any order of the court in insolvency proceedings.—*Paul v. Locust Point Co.*, 70 Md. 288, 17 Atl. 77.

(h) No appeal will lie from an order of the county court confirming an inquisition of damages in condemnation proceedings.—*Hamilton v. Annapolis & E. R. R. Co.*, 1 Md. 553; *George's Creek Coal & Iron Co. v. New Cent. Coal Co.*, 40 Md. 425; *Brown v. Philadelphia, W. & B. R. Co.*, 58 Md. 539. (For present statute on this subject, see Code [Vol. 3], art. 33a.)

(i) No appeal lies from the decision of the county court on an inquisition condemning land for the use of a railroad.—*Cumberland & P. R. Co. v. Pennsylvania R. Co.*, 57 Md. 267. (For present statute on this subject see Code [Vol. 3], art. 33a.)

(j) The Code of 1860, art. 35, §§ 53, 54, gave the Superior Court of Baltimore City special and exclusive jurisdiction in cases of contested elections, and its judgment therein was final and conclusive.—*Warfield v. Latrobe*, 46 Md. 123. (See Code of 1911, art. 33, §§ 129, *et seq.*)

(k) Under Const. art. 4, § 33, defining the powers and jurisdiction of the Supreme Bench of Baltimore City, the matter of law decided on application for a writ of habeas corpus, by any of the several judges assigned to the different courts in Baltimore city, is subject to review and determination by the Supreme Bench.—*Roth v. House of Refuge*, 31 Md. 329.

(l) There is no limitation of the right of appeal from the orphans' court, in this state, by reason of the amount involved.—*Gephart v. Strong*, 20 Md. 522; *Valentine v. Same*, *Ibid.* 525.

(m) Orders in mortgage sale proceedings are not rendered non-appealable by the

statutory character of the proceedings, nor do they come within the rule that where a judicial act is done under a special statutory authority, distinct from the general authority of the court, it is not appealable unless an appeal is expressly provided for.—*White v. Malcolm*, 15 Md. 529.

(n) Where certiorari issues in the exercise of the ordinary and usual jurisdiction of the court, an appeal will lie to review its proceedings.—*Swann v. Cumberland*, 8 Gill 150; *Baltimore & H. Turnpike Co. v. Northern Cent. Ry. Co.*, 15 Md. 193.

(o) An appeal lies from a decree in chancery in statutory proceedings for the summary foreclosure of a mortgage.—*Williams v. Williams*, 7 Gill 302; *Robertson v. American Homestead Association*, 10 Md. 397, 69 Am. Dec. 145.

(p) A proceeding for the violation of the act prescribing a penalty for insuring lottery tickets, is a civil action, in which an appeal will lie.—*State v. Mace*, 5 Md. 337.

(q) An order of the circuit court settling and allowing claims against an insolvent, being in the exercise of its special jurisdiction over the estates of insolvents, is not appealable.—*Carter v. Dennison*, 7 Gill 157.

(r) An order by the circuit court concerning an estate which is the subject of insolvency proceedings in that court cannot be appealed from, as it is a case neither in law nor equity, but a special proceeding, and there is no statutory provision for appeal.—*Williams v. Williams*, 5 Gill 88.

(s) The jurisdiction given to the county courts of Maryland to review, confirm, or set aside inquisitions had under the law authorizing the *Wilmington & Susquehanna Railroad Company* to condemn land for the construction of its road, is special and limited, and no appeal lies from its decisions.—*Wilmington R. Co. v. Condon*, 8 G. & J. 443.

(t) Appeal will lie from decrees and orders entered in a suit in equity.—*Ringgold's Case*, 1 Bland 5.

## § 42. Important or doubtful questions.

### Cross-References.

See "Courts," §§ 213, 219.

## § 43. Cases in intermediate courts.

### Cross-References.

See ante, § 20; "Courts," § 213.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 44. Cases originating in inferior courts.

### Cross-Reference.

Jurisdiction of inferior court, see ante, § 20.

(a) Code, art. 93, § 244, provides that the orphans' court shall have jurisdiction to grant relief on petition of one interested in an estate alleging that an administrator has concealed or failed to return assets of the estate in his inventory, and § 245 authorizes an appeal in such case to the Superior Court of Baltimore City. Article 5, § 60, declares that a suitor aggrieved by any decree or judgment of the orphans' court may appeal to the Court of Appeals. *Held*, that no appeal could be taken from the Superior Court of Baltimore City in proceedings brought under § 244.—*Linthicum v. Polk*, 93 Md. 84, 48 Atl. 842.

(b) An appeal does not lie from a judgment of the criminal court of Baltimore, in the exercise of its special jurisdiction, dismissing an appeal from an award of the commissioners for opening streets, as improperly taken.—*Rundle v. City of Baltimore*, 28 Md. 356. (For present law on this subject see *Baltimore City Code*, pp. 196, *et seq.*)

(c) The judgment of the circuit court upon appeal from a judgment of a justice condemning a vessel under Acts 1833, c. 254, and Acts 1837, c. 310, relating to oyster culture, is final, and cannot be reviewed by the Court of Appeals.—*State v. Mister*, 5 Md. 11.

(d) Where a county court, acting in virtue of its ordinary jurisdiction, brings proceedings of a town council before it by a writ of certiorari, an appeal lies from its judgment on the writ.—*Swann v. City of Cumberland*, 8 Gill 150.

(e) The uniform judicial interpretation of the act of 1785 relating to appeals, from its passage to the present time, has denied the right of appeal from judgments of county



courts on appeals from judgments of justices of the peace rendered under the acts of assembly for the speedy recovery of small debts.—*Crockett v. Parke*, 7 Gill 237.

(f) Appeal will not lie from the judgment of the circuit court on certiorari to review the proceedings of a magistrate in forcible entry and detainer, the proceeding being special.—*Crockett v. Parke*, 7 Gill 237.

#### (C) AMOUNT OR VALUE IN CONTROVERSY.

##### *Cross-References.*

Certificate as to grounds of appeal, see post, § 866.

Determination of questions of jurisdiction, see ante, § 23.

Dismissal for want of jurisdictional amount, see post, § 782.

Necessity that jurisdictional amount appear of record, see post, § 503.

Retroactive operation of statute, see ante, § 2.

Appeals from justices' courts, see "Justices of the Peace," § 145.

Courts invested with appellate jurisdiction, see "Courts," §§ 212, 213, 219, 220, 222, 223, 224, 231, 236, 237, 240, 242, 247, 250, 251.

Removal of causes from state to federal court as dependent on amount in controversy, see "Removal of Causes," §§ 71-76.

Restrictions on right of appeal as denial or infringement of right to jury trial, see "Jury," § 31.

United States courts invested with appellate jurisdiction as dependent on amount in controversy, see "Courts," §§ 326-330, 380, 382, 387, 388, 405.

#### § 45. Cases subject to pecuniary limitations.

(a) There is no limitation of the right of appeal from the orphans' court, in this state, by reason of the amount involved.—*Gephart v. Strong*, 20 Md. 522; *Valentine v. Same*, *Ibid.* 525.

#### § 46. Requisite amount or value.

#### § 47. Amount claimed.

#### § 48. Value of property or right claimed.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 49. Amount or value actually involved.

##### *Annotation.*

Effect of counterclaim in amount in excess of jurisdiction in appellate court.—37 L. R. A. (N. S.) 616, note.

#### § 50.— In general.

#### § 51.— Effect of set-off or counterclaim.

#### § 52.— Appeal as to part of subject-matter.

#### § 53.— Determination of amount.

#### § 54. Interest accrued.

##### *Cross-Reference.*

Interest accruing after judgment, see post, § 58.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 55. Amount or value of recovery.

##### *Cross-References.*

Amount claimed or amount recovered, see ante, § 47.

Value of property involved or amount of recovery, see ante, § 48.

Interest accrued before judgment, see ante, § 54.

#### § 56.— In general.

#### § 57.— Effect of counterclaim.

#### § 58.— Interest on recovery.

#### § 59.— Costs and attorney's fees.

#### § 60.— Collateral effect of judgment.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 61. Aggregated claims, interests, or judgments.

#### § 62. Reduction by amendment or re-mission.

#### § 63. Reduction by payment or other satisfaction.

#### § 64. Cases in intermediate courts.

##### *Cross-Reference.*

Jurisdiction of trial court, see ante, § 20.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 65. Cases originating in inferior courts.

##### *Cross-Reference.*

Jurisdiction of inferior courts, see ante, § 20.

(a) The statutes conferring jurisdiction on justices of the peace deprived the circuit courts in the counties of original jurisdiction in all cases arising on contract, where the amount recovered is less than \$50, but gave them jurisdiction to entertain appeals in such cases, and on appeal to determine the cause. Hence on such an appeal the jurisdiction exercised by a circuit court is wholly appellate, and neither its judgment,

nor any determination it may make therein, is reviewable by the Court of Appeals.—*Main v. Fessler*, 89 Md. 468, 43 Atl. 917.

#### (D) FINALITY OF DETERMINATION.

##### *Cross-References.*

See "Certiorari," § 16.

Consent of parties as conferring jurisdiction to review interlocutory orders, see ante, § 21.

Dismissal on court's own motion for lack of final judgment, see post, § 792.

Finality as affecting commencement of period of limitation, see post, § 344.

Right to appeal in forma pauperis, see post, § 389.

Time for appeal from interlocutory orders, see post, § 339.

Appeals from justices' courts, see "Justices of the Peace," § 146.

Decisions of municipal courts, see "Courts," § 190.

Finality of determination as governing appeal from probate court of Oklahoma, see "Courts," § 437.

Following state statutes and practice in federal courts, see "Courts," § 356.

Jurisdiction of United States Circuit Court of Appeals as dependent on finality of determination, see "Courts," § 405.

Jurisdiction of United States Circuit Court of Appeals to review interlocutory decrees dissolving or continuing injunctions, see "Courts," § 407.

Jurisdiction of United States Circuit Court of Appeals to review interlocutory orders or decrees appointing receivers, see "Courts," § 407.

Jurisdiction of United States Circuit Court of Appeals to review interlocutory orders or decrees denying injunctions, see "Courts," § 407.

Jurisdiction of United States Circuit Court of Appeals to review interlocutory orders or decrees granting injunction, see "Courts," § 407.

Mandamus to compel allowance of appeal from interlocutory order, see "Mandamus," § 57.

Necessity of final determination for review by United States Supreme Court of decisions of state courts, see "Courts," § 393.

#### § 66. Necessary of final determination.

##### *Cross-Reference.*

Necessity of formal judgment, see post, § 123.

(a) To entitle a party to a review, there must have been a final judgment or order rendered in the cause.—*Cunningham v. Board of School Com'rs of Carroll County*, 93 Md. 738, 43 Atl. 1046.

(b) A bill was filed to foreclose a second mortgage, and a receiver was appointed.

The trustee named in the first mortgage intervened and filed a cross bill, praying that the entire property be sold and the proceeds distributed. The property was twice sold, but both sales were set aside. A decree was then entered directing a sale subject to the first mortgage. The court directed in July, 1884, that there should be allowed to the receivers and trustees appointed to make the sales certain counsel fees, and 8 per cent. on the gross amount expended by them, and and on the amount of the first mortgage debt. The auditor was directed to audit the purchase money to the allowances specified, and that the deficiency be charged to the first mortgage bondholders. The court, by final decree, in December, 1884, directed the trustee under the first mortgage to collect the deficiency from the bondholders; and, on their failure to pay, he was ordered to make sale of the first mortgage debt and security. *Held*, that the appeal was properly taken from the final order or decree of December, 1884, and not from the preceding order of July, 1884.—*Tome v. King*, 64 Md. 166, 21 Atl. 279; *Hambleton v. Same*, *Ibid*.

(c) No appeal lies in a case begun by mandamus unless there is a final judgment in favor of the petitioner granting the right, or in favor of defendant dismissing the petition.—*Watts v. Village of Port Deposit*, 46 Md. 500.

(d) An appeal or writ of error will not lie from an interlocutory judgment or decree.—*Heath v. Irelan*, 11 Md. 388.

(e) Act 1830, c. 185, § 1, provides that no appeals shall be allowed from any decree or order of the chancery court or county court, sitting as a court of equity, unless it be a final decree, or order in the nature of a final decree, and proceeds to define the rights of parties on such appeal. By Act 1841, c. 11, § 1, it is declared that so much of § 1 of the statute of 1830 as takes away the immediate right of appeal from certain kinds of decrees and orders (enumerating them) is repealed. *Held*, that the right of appeal from final decrees and orders is not taken away by the statute of 1841; the provision in the former statute giving the right of such appeal being not inconsistent with any provision of the latter statute.—*Dugan*

v. Gittings, 3 Gill 138, 48 Am. Dec. 306. (See Code 1911, art. 5, §§ 26, 27.)

(f) Appeals lie only from final decrees, judgments, and orders.—*Keirle v. Shriver*, 11 G. & J. 405.

(g) Since the act of 1830, c. 185, an appeal will not lie from a decree in equity for the delivery of real or personal property, and an account of the rents and profits thereof, until the account is taken and finally acted on by the court.—*Hatton v. Weems*, 10 G. & J. 377. (See Code 1911, art. 5, §§ 26, 27.)

(h) The right of appeal from a decretal order is not a permissive privilege, to be exercised or not in the election of the party, and postponed at his pleasure until the final decree, but must be exercised within the statutory period prescribed for the taking of appeals.—*Strike v. McDonald*, 2 H. & G. 191.

(i) An appeal lies from an interlocutory decree in chancery in certain cases.—*Gover v. Hall*, 3 H. & J. 43.

#### § 67. Interlocutory and intermediate decisions.

##### *Cross-References.*

See post, §§ 75, *et seq.*

Adjudicating principles of cause, see post, § 92.

Assuming or refusing jurisdiction, see post, § 94.

Determining action and preventing judgment, see post, § 93.

Effect of appeal on powers of lower court, see post, § 449.

Form of remedy for review, see ante, § 5.

Involving merits, see post, § 90.

Orders after judgment, see post, § 82.

Right to appeal after dismissal of appeal from final judgment, see ante, § 14.

Scope and extent of review, see post, §§ 868-876.

Under statute relating to proceedings to establish boundary, see "Boundaries," § 44.

#### § 68.—Nature in general.

(a) Code, art. 5, § 27, relating to appeals from orders of a court of chancery, does not authorize an appeal from an order of court, directed to the cestuis que trustent of a trust estate, as defendants in a proceeding to foreclose a mortgage on the lands of the estate, to bring the money due on the mortgage into court on or before a certain day, or a decree "will be passed" for a sale of the mortgaged premises.—*Burroughs v. Gaither*, 66 Md. 171, 7 Atl. 243.

(b) An order directing, unqualifiedly, a mandamus to issue for the delivery of an office, is peremptory; and, being final, an appeal lies.—*Harwood v. Marshall*, 9 Md. 83.

(c) No appeal will lie from an order of a court of chancery requiring a trustee, a defendant in the cause, to bring money and securities in his hands into court.—*Wheeler v. Stone*, 4 Gill 38.

(d) An order requiring the principal obligor and the sureties in a bond given for the purchase money of land sold by a trustee of the court to pay such purchase money to the trustee, or bring it into court, or show cause to the contrary by a given day, is purely interlocutory, settles nothing between the parties, and is not the subject of an appeal.—*Richardson v. Jones*, 3 G. & J. 163, 22 Am. Dec. 293.

(e) No appeal lies from an order refusing to extend beyond the period prescribed by rule of court the time within which a principal may be surrendered in discharge of bail.—*Carroll v. Barber*, 7 H. & J. 454.

(f) A merely practical order, preparatory to a final hearing, and by which the rights of the parties are not affected, is not a final order, so as to be appealable.—*Thompson v. McKim*, 6 H. & J. 302; *Wheeler v. Stone*, 4 Gill 38; *In re Colvin*, 3 Md. Ch. 278.

(g) An order directing the payment of money into court is interlocutory, and not appealable.—*McKim v. Thompson*, 1 Bland 150.

#### § 69.—Nature or form of action or proceeding.

##### *Cross-References.*

Contempt proceeding as special proceeding, see post, § 83.

Under statutes authorizing appeals from final judgments, see post, § 77.

Under statutes authorizing appeals from final orders in special proceedings, see post, § 83.

Affecting substantial rights, see post, § 91.

Discretionary orders, see post, § 87.

Orders after final judgment, see post, § 82.

Under statutes authorizing appeals from final judgments, see post, § 77.

Condemnation proceeding as special proceeding, see post, § 83.

(a) An order in partition stating the opin-

ion of the court on the nature of estates created, and as to the rights of the parties in case an estate tail had or had not been barred, and ordering the taking of testimony on the question of adverse possession of the premises, reserving to the court the right of decision thereon, and also as to the relief to which the tenant in tail, if not barred, was entitled, was not a final order, within article 5, § 27, of the Code, providing for appeals from final decrees or orders in the nature of final decrees, and appeals therefrom were improvidently taken.—*Wickes v. Wickes*, 98 Md. 307, 56 Atl. 1017; *Stevens v. Wickes*, *Ibid.*; *Wickes v. Stevens*, *Ibid.*

(b) No appeal lies from an order directing a trustee to show cause within a specified time why he should not be removed.—*Chappell v. Clarke*, 94 Md. 178, 50 Atl. 527.

(c) Where, on a petition to remove an administrator, the trial court enters an order dismissing the petition, with leave to the petitioners to file a new petition, such order is not appealable, as it does not finally settle or determine the questions in controversy.—*Appler v. Merryman*, 91 Md. 706, 47 Atl. 1026.

(d) Where an order was entered requiring an executor to show cause why an *ex parte* allowance of his claim against the estate should not be set aside, and he filed an answer setting up the merits of his claim, but failing to show cause why its *ex parte* allowance should not be set aside, an order striking his answer as unresponsive, and setting a hearing for the question of its allowance, was interlocutory, and not appealable.—*Stump v. Stump*, 91 Md. 699, 47 Atl. 1034.

(e) A *nisi* order directing plaintiff in divorce proceedings to show cause why certain counsel fees and allowance of alimony should not be directed to be paid, is merely interlocutory.—*Hayward v. Hayward*, 77 Md. 125, 26 Atl. 357.

(f) In a suit for partition, an order that plaintiff's counsel fee be allowed "in the auditor's statement of account, subject to the usual exceptions," is not a final order, from which an appeal will lie.—*Johnson v. Hoover*, 75 Md. 486, 23 Atl. 903.

(g) No appeal lies from an order suspending a mortgage sale upon application of the mortgagor, and referring the papers to an auditor to state an account.—*Equitable Mut. Land Imp. Ass'n v. Becker*, 45 Md. 632.

(h) No appeal lies from an order of the court of chancery directing a bill for dower to be retained for 12 months, with liberty to the complainant to bring her action at law, to try her right to dower.—*Scott v. Crawford*, 10 G. & J. 379; *Same v. Same*, 11 G. & J. 365.

## § 70.—Nature and scope of decision.

### *Cross-References.*

Affecting substantial rights, see post, § 91.  
Discretionary orders, see post, § 87.

Under statutes authorizing appeals from final judgments, see post, § 78.

In probate proceedings, see ante, § 69.

(a) An appeal *held* to be sustainable from an order refusing a demand for a bill of particulars in a case in which the lower court held that the right did not apply.—*Newbold v. Green*, 122 Md. 648, 90 Atl. 513.

(aa) An order releasing bonds from an attachment *held* final and appealable.—*De Bearn v. De Bearn*, 119 Md. 418, 86 Atl. 1049.

(b) An order sustaining a demurrer to a bill with leave to complainant to amend is not appealable.—*Hughes v. Hall*, 117 Md. 547, 83 Atl. 1023.

(bb) An appeal lies from an order granting a motion for a new trial not filed until after the expiration of the term at which the judgment was rendered.—*Gross v. Wood*, 117 Md. 362, 83 Atl. 337; *Wood v. Rosenheim*, 117 Md. 362, 83 Atl. 341.

(c) An order of the Baltimore City Court overruling a motion to quash proceedings instituted under Code Pub. Loc. Laws, art. 4, §§ 650, etc., as re-enacted by Laws 1898, c. 123, *held* not appealable where a final judgment has not been entered.—*Cooper v. Novickow*, 116 Md. 471, 82 Atl. 207.

(d) Appeal lies to the Court of Appeals from the order of the Baltimore City Court overruling the motion to quash, on the ground of want of jurisdiction, a proceeding appealed to the City Court from a justice.—*Josselson v. Sonneborn*, 110 Md. 546, 73 Atl. 650.

(e) The Baltimore City Court having on appeal from a justice jurisdiction of the parties and the subject-matter, its judgment cannot be reviewed.—*Josselson v. Sonneborn*, 110 Md. 546, 73 Atl. 650.

(f) The Baltimore City Court on appeal from a justice had jurisdiction to pass on the sufficiency of the affidavit to the complaint made before the justice and the sufficiency of the summons issued by the justice, so that its decision thereon is not reviewable.—*Josselson v. Sonneborn*, 110 Md. 546, 73 Atl. 650.

(g) An order overruling a demurrer to the entire bill of complaint is in the nature of a final decree, and an appeal lies therefrom.—*Town of Hyattsville v. Smith*, 105 Md. 318, 66 Atl. 44.

(h) An order adjudging an answer insufficient, and requiring a further answer, is not final, and therefore not appealable.—*Potts v. Potts*, 88 Md. 640, 42 Atl. 214.

(i) Complainant cannot appeal from an order making the payment of costs and a counsel fee a condition of the granting of his motion to dismiss the bill.—*Chappell v. Chappell*, 82 Md. 647, 33 Atl. 650.

(j) To a creditors' bill making a mortgagee of the debtor defendant, and seeking a redemption from the mortgage and a sale for the benefit of the creditors, defendant mortgagee demurred on the ground that complainant, being only a general creditor, had no right to redeem. *Held*, that an order sustaining the demurrer was final, as to proceed further on the creditors' bill would have been fruitless.—*McNiece v. Eliason*, 78 Md. 168, 27 Atl. 940.

(k) No appeal lies from a judgment overruling a demurrer to a petition in insolvency, which adjudicates simply the sufficiency of the petition and affidavit.—*Tawes v. Tyler*, 71 Md. 506, 18 Atl. 887.

(l) An appeal will not lie from an order requiring the defendant to answer before a certain day, such order not being final.—*Dennison v. Wantz*, 61 Md. 148.

(m) An appeal will not lie from an order suspending or rescinding an interlocutory order of sale.—*Washington City & P. L. R. Co. v. Southern Md. R. Co.*, 55 Md. 153.

(n) An appeal will not lie from a judgment sustaining a demurrer to a replication in an action of replevin, no final judgment appearing in the record.—*Dietrich v. Swartz*, 41 Md. 196.

(o) One who is sued out of the county of his residence may, under the laws of Maryland, present the question of his nonresidence by a motion for a non pros., supported by an affidavit; and it is the duty of the court to hear and determine the question so presented, without the intervention of a jury. But if the court orders an issue to be framed, to have the question determined by a jury, no appeal lies from the order; such order not being a denial of the defendant's motion, nor such a final disposition of the case as to be subject to review in the appellate court.—*Gittings v. State*, 33 Md. 458.

(p) An order of the circuit court upon a motion by the defendant to strike out the entries upon the docket of previous proceedings in the cause, and require the plaintiff to file a new declaration, is not final, so far as to be subject to appeal.—*Hazlehurst v. Morris*, 28 Md. 67.

(q) No appeal can be taken from an order overruling or sustaining a demurrer, before final judgment in the cause.—*Schindel v. Suman*, 13 Md. 310.

(r) An order of the circuit court allowing complainant to examine defendant as a witness is merely interlocutory, and appeal will not lie.—*Heath v. Ireland*, 11 Md. 388.

(s) An order referring a case to an auditor to state an account is not final and appealable.—*Owings v. Worthington*, 4 Md. 260.

(t) The judgment overruling a motion to quash a writ is a mere interlocutory order, from which an appeal will not lie.—*Welch v. Davis*, 7 Gill 364.

(u) After a cause had been argued, the chancellor proceeded to discuss many rules and principles of equity, and a great variety of facts, all of which he considered clearly in favor of one of the parties, and announced his intention at some future time to decree accordingly. To enable himself to do so, he passed an order that the cause

be referred to an auditor to state an account according to his views, from the proceedings and proofs then in the cause, or from such further proofs as might be adduced by the parties, which they were authorized to introduce, upon notice, before a given day. *Held*, that the order did not so settle or materially affect all or any of the rights and interests in controversy as to make it a decretal order from which an appeal would lie.—*Hagthorp v. Hook*, 1 G. & J. 270.

(v) The setting aside of a judgment against a casual ejector, on motion of the landlord of the tenant in possession, awarding restitution of the premises, and ordering the action to be tried, is but an interlocutory proceeding, from which an appeal will not lie; and the refusal of the court below to reconsider such proceeding does not alter the case.—*Gover v. Cooley*, 1 H. & G. 7.

#### § 71.—Affecting provisional remedies.

##### *Cross-References.*

Affecting substantial rights, see post, § 91.

Discretionary orders, see post, § 87.

Final judgment, see post, § 80.

Orders after appointment of receiver, see post, § 82.

(a) Code, art. 5, § 27, authorizes an appeal from an order appointing receivers, but an order refusing to rescind their appointment is not final in its nature, and is not appealable.—*Monumental Mut. Life Ins. Co. v. Wilkinson*, 100 Md. 31, 59 Atl. 125.

(b) An order quashing an attachment is a final order, and is appealable, without reference to Code, art. 9, §§ 20-24, giving the right of appeal where the defendant, before the return day of the writ, files a special petition to have the attachment quashed.—*Steuart & Steuart v. Chappell*, 98 Md. 527, 57 Atl. 17.

(c) An appeal will not lie from an order overruling a motion to dissolve or discharge an attachment, the same being not a final order, but one subject to review of the court up to the rendition of judgment on the merits of the case.—*Baldwin v. Wright*, 3 Gill 241.

(d) Upon a scire facias against a special bail where the defendant did not plead to the writ, but moved the court to enter an exoneration, which being done, the plaintiff

appealed, the court dismissed the appeal, there being no final judgment in the case.—*McArthur v. Martin*, 1 Gill 259.

#### § 72.—Affecting collateral matters and proceedings.

##### *Cross-References.*

Relating to parties, see ante, § 70.

Special proceedings, see post, § 83.

Under statutes authorizing appeals from final judgments, see post, § 81.

(a) An order allowing provisionally, and subject to exception, a counsel fee for professional services rendered on behalf of a trust estate which is being administered under the supervision of the court, is not a final order, and is therefore not appealable.—*Clarke v. O'Brien*, 97 Md. 738, 56 Atl. 788.

#### § 73.—Appealable judgments and orders.

##### *Cross-Reference.*

See ante, §§ 67-72.

(a) From an interlocutory judgment overruling a demurrer to a petition to have a person adjudged insolvent, no appeal will lie.—*Griffie v. Mann*, 62 Md. 248.

(b) Under act 1841, c. 11, § 1 (Code, art. 5, § 27), an order of the court of chancery for the sale of real and personal property is the subject of an appeal.—*Wheeler v. Stone*, 4 Gill 38.

(c) The court of chancery has no power to issue an attachment against the sureties of its trustee for the sale of the mortgaged premises to satisfy the mortgage debt, to compel them to bring into court moneys received by their principal, at the instance of the mortgagor or those claiming in his right; and all steps preparatory to such a procedure, where they assume the character of decretal orders, are the subject of revision on appeal, and equally invalid with the process affecting the liberty of the sureties.—*Boteler v. Brookes*, 7 G. & J. 143.

#### § 74.—Effect of right to review on appeal from final judgment.

##### *Cross-References.*

See ante, § 73.

As affected by time for taking proceedings, see post, § 339.

Scope and extent of review as to interlocutory and intermediate proceedings, see post, §§ 870-873.

Specification of interlocutory or intermediate judgment or order in notice of appeal, see post, § 420.

(a) Under Code, art. 5, §§ 26-28, an order overruling a plea to a part of a bill is not appealable, but is only reviewable on appeal from a final decree.—*Peoples v. Ault*, 117 Md. 631, 84 Atl. 60.

(b) An order rescinding an order authorizing and directing an executor to pay attorneys a certain sum for services rendered is not a "final order" from which an appeal lies.—*Decker v. Fahrenholtz*, 107 Md. 515, 68 Atl. 1048.

### § 75. Final judgments or decrees.

#### *Cross-References.*

See ante, §§ 67, *et seq.*

Scope and extent of review, see post, §§ 870-873.

### § 76.— Nature in general.

#### *Cross-Reference.*

Resort to motion for new trial as affecting remedy by appeal, see ante, § 13.

(a) Docket entries, showing submission of the cause to a jury, verdict and judgment for defendant, and appeal by plaintiff, show a final and hence an appealable, judgment.—*Wilkin Mfg. Co. v. Melvin*, 116 Md. 97, 81 Atl. 879.

(b) An order denying petitioner the means of further prosecuting his suit is final and appealable.—*Bragunier v. Penn*, 79 Md. 244, 29 Atl. 12.

(c) A plea of the statute of limitations by certain defendants does not inure to the benefit of nonanswering defendants, but the court has a right, if it chooses, to reserve the question whether it does or not, and such reservation gives the plaintiff no ground of appeal.—*Simms v. Lloyd*, 58 Md. 477.

(d) The opinion of a judge is not in any sense the final act, however positive, so as to be the subject of appeal as it may always be altered or changed before final decree.—*Cornell v. McCann*, 48 Md. 592.

(e) An order directing the payment into court of a certain sum of money is not in the nature of a final decree, from which an appeal is given.—*Dillon v. Connecticut Mut. L. Ins. Co.*, 44 Md. 386. (See Code, art. 5, § 27.)

(f) The limitation against appeals except

when the decision of the court below is so far final as to settle and conclude the rights involved, must be understood to apply only to judgments entered in fieri, and not to final judgments obtained by the plaintiff after the term has passed.—*Graff v. Merchants' & M. Transp. Co.*, 18 Md. 364.

(g) The enunciation by the judge of the law upon the facts is the judgment, and, whether partial or final, it is the function of appellate courts to determine whether it is correct or not.—*State v. Northern Cent. Ry. Co.*, 18 Md. 193.

(h) The act of 1830, enumerating, among the decrees not to be regarded as final, those for the sale of real estate, does not embrace a case where the liability of the property to be sold was the question to be determined.—*Ware v. Richardson*, 3 Md. 505, 56 Am. Dec. 762. (See Code, art. 5, § 27.)

(i) An order requiring a defendant to bring money into court, and that it be deposited in bank, subject to the future order of the court, is not a final decree.—*McKim v. Thompson*, 1 Bland 150. (See Code, art. 5, § 27.)

### § 77.— Nature or form of action or proceeding.

#### *Cross-References.*

Under statutes authorizing appeals from interlocutory and final orders, see ante, § 69.

Affecting substantial rights, see post, § 91.

Discretionary decisions, see post, § 87.

(a) A decree which absolutely confirms the report of commissioners by which land was partitioned and allotted by metes and bounds, with an accompanying plat, to the respective parties complainant and defendant, is final.—*Bull v. Pyle*, 41 Md. 419.

(b) An appeal did not lie, under act 1830, c. 185, from a decree for the sale of property for the purpose of partition, without passing upon the accounts or rights of parties in respect to the fund, it not being a final decree.—*Lee v. Pindle*, 11 G. & J. 362. (See Code, art. 5, §§ 26, 27.)

### § 78.— Nature and scope of decision.

#### *Cross-References.*

Affecting substantial rights, see post, § 91.

Discretionary decisions, see post, § 87.  
Final discretionary decisions, see post, § 87.

Finality as to all parties, see post, § 79.  
Under statutes authorizing appeals from interlocutory and final orders, see ante, § 70.

Dismissal on demurrer, see post, § 79.  
As an order after judgment, see post, § 82.

(a) Under Code, art. 5, § 26, allowing appeals from final decrees or orders in the nature of final decrees, an appeal will not lie from an order allowing the receivers of a corporation to appeal from a foreign judgment rendered against the corporation.—*Beilman v. Poe*, 120 Md. 444, 88 Atl. 131.

(aa) Although an order sustaining a demurrer to a bill without granting leave to amend or dismissing the bill was not strictly appealable, where it appeared in the record that in the circuit judge's opinion the bill would have to be dismissed, the appeal would not be dismissed because of the technical defect.—*Chaney v. Commissioners of Anne Arundel County*, 119 Md. 385, 86 Atl. 1039.

(b) Under Code, art. 75, §§ 12, 13 and art. 26, § 17, where by reason of the partial allowance of defendants' set-off, plaintiff recovered less than the amount required to establish the court's jurisdiction, and was therefore granted a judgment of non pros., such judgment was final and appealable.—*Baer v. Robbins*, 117 Md. 213, 83 Atl. 341.

(bb) An order overruling defendant's exceptions to plaintiff's answer to a demand for a bill of particulars and refusing the demand and requiring defendant to plead to the declaration *held* not appealable.—*Warfield v. State*, 116 Md. 599, 82 Atl. 1053.

(c) Where, through a demurrer to the petition was sustained in a proceeding to review the refusal of the county commissioners, acting as a board of control and review, to abate an assessment, the petition was not dismissed, and no final disposition made of the case, the order sustaining the demurrer was not final so as to be appealable.—*Chesapeake & Potomac Telephone Co. v. Board of County Com'rs.*, 116 Md. 220, 81 Atl. 520.

(cc) Determination of questions of law raised as a preliminary to the actual trial under the direct provisions of Code, art. 16, § 205, are in the nature of final decrees, and are appealable.—*Buckler v. Safe Deposit & Trust Co. of Baltimore*, 115 Md. 222, 80 Atl. 899.

(d) A judgment for defendant, rendered on plaintiff's refusal to join issue on the denial of his motion for judgment by default for want of a plea and affidavit of defense, is a final judgment as to plaintiff.—*Smith v. Woman's Medical College of Baltimore City*, 110 Md. 441, 72 Atl. 1107.

(e) An unconditional and absolute order of the orphans' court, directing an administrator to pay a fee to an attorney for services rendered the estate, is a final order, from which an appeal lies.—*Flater v. Weaver*, 108 Md. 668, 71 Atl. 309.

(f) An order overruling a general demurrer to a bill of complaint is a final decree or order, within the meaning of the law allowing appeals from any final decree or order in the nature of a decree.—*Darcey v. Bayne*, 105 Md. 365, 66 Atl. 434, 10 L. R. A. (N. S.) 863.

(g) A decree dismissing a bill to cancel judgments and enjoin enforcement thereof, though "without prejudice" to file a new bill with proper parties, adjudicates rights, and so is so far final as to allow of appeal, it having the effect of dissolving the preliminary injunction.—*Ridgely v. Wilmer*, 97 Md. 725, 55 Atl. 488.

(h) A judgment of non pros. is appealable, being final as to plaintiff.—*Henderson v. Maryland Home Fire Ins. Co.*, 90 Md. 47, 44 Atl. 1020.

(i) An order denying petitioner the means of further prosecuting his suit is final and appealable.—*Bragunier v. Penn.*, 79 Md. 244, 29 Atl. 12.

(j) In a proceeding to forfeit the franchise of a corporation, a demurrer entered by the state to one of the paragraphs of the answer was overruled, but nothing further was done in the case. *Held*, that there was no final judgment from which an appeal could lie.—*State v. Easton Social, Literary & Musical Club*, 72 Md. 297, 20 Atl. 242.



(k) A judgment overruling a demurrer to a petition in insolvency is not final.—*Tawes v. Tyler*, 71 Md. 506, 18 Atl. 887.

(l) A plea of the statute of limitations by certain defendants does not inure to the benefit of nonanswering defendants, but the court has a right, if it chooses, to reserve the question whether it does or not, and such reservation gives the plaintiff no ground of appeal.—*Simms v. Lloyd*, 58 Md. 477.

(m) An order confirming an auditor's report, and directing the trustees to apply the proceeds in accordance with the report, is appealable, as a final judgment.—*County Com'rs. of Talbot v. County Com'rs. of Queen Anne*, 50 Md. 245.

(n) An order directing the payment into court of a certain sum of money is not in the nature of a final decree, from which an appeal is given.—*Dillon v. Connecticut Mut. L. Ins. Co.*, 44 Md. 386. (See Code, art. 5, § 27).

(o) An order of a court of equity suspending a sale, and operating as a continuation and renewal of the former order of sale, is not a final decree.—*Dorsey v. Thompson*, 37 Md. 25.

(p) An order of the circuit court passed on a petition filed under Code, art. 75, § 99, for the production of papers, is not a final judgment, concluding the rights of the parties in the cause, so as to support an appeal.—*Magraw v. Munnikhuysen*, 35 Md. 291.

(q) When a motion to set aside a judgment, made at the same term of the court at which the judgment was rendered is overruled, and the effect of such overruling is to make the judgment final and conclusive, an appeal will lie.—*King v. Hicks*, 32 Md. 460.

(r) A mere interlocutory judgment overruling a motion to enter judgment because the pleas were not verified by affidavit, leaving the case upon the docket for final trial and adjudication as it stood before the judgment, and determining nothing final between the parties, is not the subject of appeal.—*Smithson v. United States Tel. Co.*, 29 Md. 162.

(s) An appeal does not lie from an order overruling a motion to quash a writ of error coram nobis, it not being a final judgment from which an appeal properly lies.—*Bridendolph v. Zellers*, 3 Md. 325.

(t) An order confirming an auditor's report is an order in the nature of a final decree, from which an appeal will lie.—*Wyman v. Jones*, 4 Md. Ch. 500.

(u) In an action of debt, an appeal will not lie from a judgment on a demurrer, without waiting for final judgment, after ascertainment of damages, upon a replication assigning breaches of the condition of a bond declared upon.—*Wheeler v. State*, 7 Gill 33.

(v) Under act 1830, c. 185 (Code, art. 5, § 26), declaring that no appeal shall hereafter be allowed from any decree or order of the court of chancery unless it be a final decree, or in the nature of a final decree, an order referring a cause to an auditor is not appealable.—*Darrington v. Rogers*, 1 Gill 403.

(w) A decree for an account, with a view to a future decree, directing the manner of stating the account, but not deciding any rights of the parties, or settling any rule, in stating the account, which could not be changed in the progress of the case, is not a final decree, from which an appeal will lie, under act 1830, c. 185 (Code, art. 5, § 26).—*Clagett v. Crawford*, 12 G. & J. 275.

(x) Where there were issues of law and issues of fact in the same record, the issues of fact were first tried and found for the plaintiff, and the issues of law were determined by the court for the defendant, and judgment rendered accordingly. On motion of the plaintiff, the court set aside the verdict, and ordered the issues to be tried anew. The plaintiff, by leave of the court amended his pleadings, and the defendant appealed from the judgment of the court granting a new trial. *Held*, that the decision of the lower court was not so far final as to settle and conclude the rights involved in the action, or deny the party the means of further prosecuting or defending the suit, and that the appeal must

be dismissed.—*Boteler v. State*, 7 G. & J. 109.

(y) Where the chancellor expressed his opinion upon the case decidedly in favor of the complainants, but merely passed an order referring the case to an auditor, with directions to receive further proof and state an account, no appeal would lie, as there was no final judgment.—*Snowden v. Dorsey*, 6 H. & J. 114; *Hungerford v. Bourne*, 3 G. & J. 133; *Roberts v. Salisbury*, *Ibid.* 425.

(z) An order requiring a defendant to bring money into court, and that it be deposited in bank, subject to the future order of the court, is not a final decree.—*McKim v. Thompson*, 1 Bland, 150. (See Code, art. 5, § 27.)

### § 79.—Finality as to all parties.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 80.—Determination of controversy.

#### *Cross-References.*

Orders relating to sale, see post, § 82.

Review of partial judgment, see post, § 111.

(a) A default judgment is not final until the amount is ascertained, and no appeal lies therefrom.—*Sharp v. Bates*, 102 Md. 344, 62 Atl. 747.

(b) A declaration alleged that plaintiff let to defendant a house for one year at \$1,500 a year, of which rent one quarter was due and unpaid. Defendant pleaded under oath (1) that he was never indebted as alleged; (2) that he did not promise as alleged; and (3) a special plea. Plaintiff moved for judgment notwithstanding such pleas. *Held*, that a denial of the motion as to the first and second pleas was not a final judgment, or a judgment against plaintiff, from which an appeal would lie.—*Moale v. Smith*, 86 Md. 683, 37 Atl. 370.

(c) Where one of two parties who has been decreed liable to trustees for a certain sum brings the money into court, praying a decree that the other is primarily liable to the trustees, and consequently to repay petitioner, a decree that nothing therein shall be construed to affect or determine the rights of the parties so liable, as between

themselves, does not finally determine the liability of the one to pay the other, within Code, art. 5, § 26, allowing an appeal from any final decree, or order in the nature of a final decree.—*Swift v. Manufacturers' Nat. Bank*, 69 Md. 232, 14 Atl. 661.

(d) A ruling which concludes the rights at issue, or denies redress to a party seeking it, is final and appealable.—*Thompson v. McKim*, 6 H. & J. 302; *Waverly Mutual & Permanent Land Loan & Building Ass'n v. Buck*, 64 Md. 338, 1 Atl. 561.

(e) A decree which disposes of the whole subject, gives all the relief that is contemplated, and leaves nothing to be done, is a final decree.—*Nally v. Long*, 56 Md. 567.

(f) A decree, which absolutely confirms the report of commissioners by which land was partitioned and allotted by metes and bounds, with an accompanying plat, to the respective parties complainant and defendant, is final.—*Bull v. Pyle*, 41 Md. 419.

(g) A final decree is one which so fixes the rights of the parties that it can be carried into effect without further inquiry thereon.—*Ware v. Richardson*, 3 Md. 505.

(h) An order of the circuit court, referring the cause to the auditor, with directions to report the annual loss sustained by the plaintiff for the land claimed by him as embraced within the true location of his bond of conveyance, and withheld by the defendant, is not a final adjudication that he is entitled to such land, and does not settle the rights of the parties, and an appeal will not lie from it.—*Smallwood v. Hatton*, 4 Md. Ch. 100.

(i) An appeal did not lie, under act 1830, c. 185, from a decree for the sale of property for the purpose of partition, without passing upon the accounts or rights of parties in respect to the fund, it not being a final decree.—*Lee v. Pindle*, 11 G. & J. 362. (See Code, art. 5, §§ 26, 27.)

(j) An order overruling a plea in bar is not final and appealable, since it does not determine the matter in controversy.—*Danels v. Taggarts*, 1 G. & J. 311.

(k) The main question presented by the bill and answer in a cause was whether

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

certain money in controversy between the parties was deposited with A. by B. for the use and benefit of the holders of certain bills of exchange which had been drawn by B., or was paid to A. for his own use, in discharge of a debt due to him from the house of C. & Co.; and on this question the parties were directly at issue, and its solution depended on the construction of an agreement between A. & B. *Held*, that a decision involving the construction of that agreement was a decision of the whole matter in controversy, so far as A. was concerned, and, the court below having ordered that A. should bring the money into court, on the ground that he had no right or title thereto, that such order was properly the subject of an appeal.—*Thompson v. McKim*, 6 H. & J. 302.

### § 81.—Collateral matters and proceedings.

(a) Orders in a suit by a wife against her husband for the custody of the infant child of the parties and for permanent alimony, which enjoin the husband from interfering with the child pending the suit, and which relate to counsel fees and temporary alimony, are not reviewable, because not final.—*Outlaw v. Outlaw*, 118 Md. 498, 84 Atl. 383.

(b) An order allowing provisionally, and subject to exception, a counsel fee for professional services rendered on behalf of a trust estate which is being administered under the supervision of the court, is not a final order, and is therefore not appealable.—*Clarke v. O'Brien*, 97 Md. 738, 56 Atl. 788.

### § 82. Orders after judgment.

#### *Cross-References.*

Affecting substantial rights, see post, § 91.

Review of decisions opening or vacating judgment, see post, § 113.

In divorce suits, see "Divorce," § 177.

Discretionary orders, see post, § 87.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 83. Final orders in special proceedings.

#### *Cross-References.*

Affecting substantial rights, see post, § 91.

Decisions of intermediate courts, see post, § 84.

Form of remedy for review, see ante, § 4.

Necessity of final order, see ante, § 66.

Orders affecting collateral matters and proceedings, see ante, § 72.

Probate proceedings, see ante, § 69.

(a) Where an order granting a rehearing on exceptions to the ratification of a mortgage sale was not duly filed, an appeal will not lie from an order allowing the order for rehearing and the petition to be filed as of the date when the order was passed, the order allowing the motion not being mentioned in Code, art. 5, § 27, allowing appeals from certain orders, and it not being a final decree, from which an appeal lies under Code, art. 5, § 26.—*Keifer Heirs v. Reichert*, 93 Md. 97, 48 Atl. 460.

### § 84. Decisions of intermediate courts.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### (E) NATURE, SCOPE, AND EFFECT OF DECISION.

#### *Cross-References.*

Form of remedy dependent on nature of decision, see ante, § 5.

Interlocutory or final decisions, see ante, §§ 66-84.

Nature of subject-matter as ground of review, see ante, §§ 33-44.

Appeal from justice's court, see "Justices of the Peace," § 147.

Decisions of municipal courts, see "Courts," § 190.

Following state statutes and practice in federal courts, see "Courts," § 356.

In district courts in cities, see "Courts," § 194.

### § 85. Judicial nature of decision.

#### *Cross-Reference.*

Ex parte decisions, see ante, § 9.

(a) An appeal lies from an error of opinion in respect to the legal effect of, or to the application of, a legitimate rule of court.—*Dunbar v. Conway*, 11 G. & J. 92; *Gist v. Drakely*, 2 Gill 330, 41 Am Dec. 426.

(b) A judgment of a county court setting aside as entirely void a judgment against a party, and rendering judgment in her favor for her costs, is a judicial act, subject to appeal.—*Hawkins v. Bowie*, 9 G. & J. 428.

### § 86. Discretionary action.

#### *Cross-References.*

Decisions of intermediate courts, see post, § 120.  
 Dismissal of appeal, see post, § 788.  
 Scope and extent of review of discretionary action, see post, §§ 940-986, 1092.  
 Grant or refusal of license, see "Intoxicating Liquors," § 75.

### § 87.—Matters resting in discretion.

#### *Cross-Reference.*

Finality of decisions, see ante, §§ 69, 70, 71, 77, 78, 82.

(a) A motion to strike a judgment by confession, made at the same term at which the judgment was entered, being addressed to the sound discretion of the trial court, no appeal lies from an order striking the judgment.—*Sunderland v. Braun Packing Co.*, 119 Md. 125, 86 Atl. 126.

(aa) No appeal lies from an order setting aside a decree dismissing a bill for plaintiff's failure to file a replication within the required time, where the errors consist in mere irregularities, since the action of the trial court in such cases is in its sound discretion.—*Norris v. Ahles*, 115 Md. 62, 80 Atl. 654.

(aaa) A motion for a new trial is addressed to the sound discretion of the court, and no appeal will lie from the order granting or refusing the same.—*Whitcomb v. Mason*, 102 Md. 275, 62 Atl. 749, 4 L. R. A. (N. S.) 565.

(b) An order dismissing a petition for rehearing of an order overruling objections to the confirmation of a judicial sale is discretionary and hence not appealable.—*Aukam v. Zantzinger*, 98 Md. 380, 56 Atl. 820.

(bb) Under Code, art. 16, § 17, providing that a party to a bill in equity shall have the right, on payment of such costs as the courts may direct, to amend so as to bring the merits fairly to trial, the application to amend is addressed to the discretion of the court, and there is no appeal from an order permitting an amendment.—*Snook v. Munday*, 96 Md. 514, 54 Atl. 77.

(bbb) the power to grant administration to two persons with the consent of the per-

son first entitled, conferred on the orphans' court by Code, art. 93, § 15, is one to be exercised entirely in its discretion, though only one of them belongs to a class all of whom are equally entitled to administration; and from the exercise of such power no appeal will lie.—*Kailer v. Kailer*, 92 Md. 147, 48 Atl. 712.

(c) Where, at a trial in the orphans' court on a petition to remove an administrator, the court refuses permission to the petitioners to amend their petition, no appeal will lie from such action, since, assuming that the orphans' court has power to permit amendments to be made to pleadings in proceedings pending before it, the exercise of such power is in the discretion of the court.—*Appler v. Merryman*, 91 Md. 706, 47 Atl. 1026.

(cc) A petition in equity for a rehearing is in the nature of a motion for a new trial, and is addressed to the sound discretion of the court, from the exercise of which no appeal will lie.—*Jacobs v. Bealmear*, 41 Md. 484; *Crane v. Judik*, 86 Md. 63, 38 Atl. 131.

(ccc) The denial by the circuit court of an application requiring complainants to give an injunction bond is within the discretion of the court, and not reviewable on appeal.—*Commissioners Washington County v. School Com'rs. Washington County*, 77 Md. 283, 26 Atl. 115. [*Cited and annotated in 20 L. R. A. 167, on power to grant mandatory injunctions.*]

(d) The appointment of the mother as guardian of her illegitimate child, in the place of the testamentary guardian appointed by the putative father, is the exercise of a discretionary power by the court, from which there is no appeal.—*Ramsay v. Thompson*, 71 Md. 315, 18 Atl. 592, 6 L. R. A. 705. [*Cited and annotated in 65 L. R. A. 690, 695, 696, on right of mother, or reputed father to custody or control of illegitimate child; in 13 L. R. A. (N. S.) 294, on effect of father's attempt to appoint guardian for child against surviving mother; in 33 L. R. A. (N. S.) 870, on right of parent to appointment as guardian of minor.*]

(dd) On a motion to quash an execution on a judgment, from which defendant failed to appeal within the statutory period, questions cannot be presented that might have arisen on such appeal, and the refusal of the court to hear such questions is the exercise of a discretion, from which no appeal can be taken.—*Union Nat. Bank v. Shriver*, 68 Md. 435, 13 Atl. 332; *Same v. Benford*, 13 Atl. 334 (memo. decision).

(ddd) The amendment of a pleading is within the discretion of the court, and from the decision no appeal will lie.—*Brown v. State*, 64 Md. 199, 1 Atl. 54, 6 Atl. 172.

(e) The question of costs is a matter resting in the discretion of the trial court, from the exercise of which no appeal will lie.—*Dodge v. Stanhope*, 55 Md. 113.

(ee) Where the declaration in an action for slander, charging the speaking of words imputing larceny, was amended during the trial, by leave of court, so as to charge the speaking of words imputing embezzlement, the refusal of the court to allow the defendant to file a plea of the statute of limitations to the new counts of the amended plea was not a matter of discretion from which no appeal lay.—*Schulze v. Fox*, 53 Md. 37.

(eee) Costs in equity are in the sound discretion of the court, and from its decision no appeal lies.—*Smith v. Shaffer*, 50 Md. 132.

(f) The power conferred on the orphans' court by Code, art. 93, § 15, to grant letters of administration to two or more persons with the consent of the person first entitled, is one to be exercised wholly in the discretion of the court, and from its exercise no appeal will lie.—*Covey v. Charles*, 49 Md. 314.

(ff) A refusal to permit the filing of additional reasons in support of a motion to strike out a judgment is not appealable.—*Herbert v. Wich*, 45 Md. 474.

(fff) The Court of Appeals will not entertain an appeal from an order of a court of equity granting or refusing to grant a rehearing. It is analogous to a motion for a new trial at common law, and no appeal

lies from the decision thereon.—*Waring v. Turton*, 44 Md. 535.

(g) Orders of the orphans' court as to the investment of money, under section 242 of article 93 of the Code, are not subject to appeal where the court has not exceeded its jurisdiction.—*Jones v. Jones*, 41 Md. 354.

(h) The refusal of the court to recall a witness for the purpose of stating what his testimony was is not the subject of an appeal, but is a matter to be determined by the sound discretion of the court below.—*Green v. Ford*, 35 Md. 82.

(i) The allowance of commissions to a trustee by the circuit court is a matter of discretion, and not subject to appeal.—*Brady v. Dilley*, 27 Md. 570.

(j) A ruling admitting proof after the prayers have been submitted and arguments made thereon is not appealable, where the witnesses were specially retained for the purpose, and notice of the fact and of the nature of the proof to be offered was given the other side.—*Dailey v. Grimes*, 27 Md. 440.

(k) Ordinarily, no appeal lies from an order requiring a trustee or receiver to bring money into court. Such orders are subject to the discretion of the court, and, if no right is determined, they may not be reviewed on appeal.—*Henry v. Kaufman*, 24 Md. 1, 87 Am. Dec. 591. (See Code, art. 5, § 27.)

(l) No appeal will lie from an order of the orphans' court directing a sale of the estate of the deceased, passed upon the application of an administrator.—*Crawford v. Blackburn*, 19 Md. 40.

(m) The decision of the lower court, refusing a new trial unless a remittitur is entered as to a portion of the verdict, is not the subject of an appeal, the question being one addressed to the discretion of that court.—*Baltimore v. Reynolds*, 18 Md. 270.

(n) The court has discretion, upon motion made, during the term at which a judgment has been rendered, to strike it out; and no appeal lies therefrom.—*Rutherford v. Pope*, 15 Md. 579.

(o) No appeal lies from an order of the circuit court, ascertaining, under act 1796, c. 67, § 27, the amount of costs, damages, and expenses incurred by the master of a slave on a former petition for freedom, to be paid by the petitioner before proceeding with a second petition, if such ascertainment, when made, is within the limits of the court's discretion.—*Cecil v. Negro Rose*, 14 Md. 64.

(p) Under act 1831, c. 315, § 4 (Code, art. 98, § 242), no appeal can be taken from an order of the orphans' court requiring an executor to bring into court a certain sum, being the balance due from him, or from a subsequent order revoking his letters for neglect to comply with the former one. These matters are within the discretion of the orphans' court.—*Porter v. Timanus*, 12 Md. 283.

(q) An appeal will not lie from a decision of the orphans' court refusing to take a bond, tendered under the second section of act 1793, c. 45 (Code, art. 6, § 18), to prevent the binding out of an infant. The character of the party offering the bond, whether he be a suitable and proper person to perform the duties imposed by its conditions are matters left to the judgment and sound discretion of the orphans' court.—*Johnson v. Brannaman*, 10 Md. 495. [*Cited and annotated in 65 L. R. A. 693, on right of mother, or reputed father to custody or control of illegitimate child.*]

(r) Where an order of court is within the limits of its discretion, it is final, and no appeal lies; and, where the order upon its face appears to be partly within and partly beyond its scope of authority, it may be appealed from and reversed.—*Negro Bell v. Jones*, 10 Md. 322.

(s) No appeal will lie from the decision of the orphans' court ordering a guardian to bring into court all the money in his hands belonging to his ward, as it is a matter in discretion of the orphans' court.—*Falconer v. Regelier*, 6 Md. 552.

(t) An order allowing a supplemental pleading is discretionary and not reviewable.—*Thomas v. Doub*, 1 Md. 252.

(u) Where a bill of particulars was

called for and furnished, and at a subsequent term the defendant pleaded the general issue, and at the next term thereafter, when the case was called for trial, the defendant excepted to the sufficiency of the bill of particulars, the decision overruling the exception, being a matter within the discretion of the court, could not be appealed from.—*Randell v. Glenn*, 2 Gill, 430.

(v) An application to the court of chancery to appoint an early day for the hearing of a motion to dissolve an injunction is a matter exclusively within the discretion of the court, and no appeal lies from its decision thereon.—*Owings v. Worthington*, 10 G. & J. 233.

(w) An order of the circuit court directing the sheriff to bring into court money which he had received upon an execution rests in its discretion, and is not appealable.—*Sanderson v. Alcock*, 9 G. & J. 184.

(x) Appeal or writ of error will not lie to review any decision on matters depending solely on the discretion of the court below.—*Wall v. Wall*, 2 H. & G. 79.

(y) No appeal lies from an order, passed over the objection of the attorney general, admitting one to practice as an attorney, in the absence of specific statutory provisions providing therefor.—*State v. Johnson*, 2 H. & McH. 160.

#### § 88.—Refusal to exercise discretion.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 89.—Abuse of discretion.

(a) Where a guardian was removed without any showing that he was an improper person, or had been guilty of improper conduct, as provided in Code, art. 93, § 237, it is an abuse of discretion, which will be reviewed on appeal.—*Slattery v. Smiley*, 25 Md. 389

#### § 90. Involving merits.

##### Cross-Reference.

Decisions of intermediate courts, see post, § 120.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

# § 91. Affecting substantial rights.

## *Cross-References.*

Causing irreparable injury, see ante, § 73.

Decisions of intermediate courts, see post, § 120.

Orders affecting substantial rights and determining action and preventing judgment, see post, § 93.

Validity of statute authorizing appeals from interlocutory orders affecting substantial rights, see ante, § 2.

Finality of decision, see ante, §§ 70, 78, 82, 83.

(a) Where an order on the settlement of accounts of trustees provided that the wives of certain bankrupt beneficiaries were not entitled to dower, authorized commissions to the trustees, and, after ruling on matters presented by other parties in interest, reserved a question for further consideration, and required the auditor to restate his account so as to conform to the terms of the order, it was not a final order, but was an appealable order, within Code, art. 5, § 27, authorizing an appeal from an order determining a question of right between the parties, and directing an account to be stated on the principle of such determination.—*Slingluff v. Hubner*, 101 Md. 652, 61 Atl. 326.

(b) Since a decree of the circuit court awarding to a cestui que trust the proceeds of trust property wrongfully pledged by the trustee for his own debt involves the determination of a question of right between the parties, and is of such a character as to draw after it the coercive process of the court, an appeal lies therefrom to the court of appeals.—*Woodside v. Grafflin*, 91 Md. 422, 46 Atl. 968.

(c) Under Code, art 5, § 26, authorizing an appeal from an order determining a question of right, and directing the statement of an account on such determination, a decree that the contract of sale did not set out the agreement of the parties, and that the vendees were entitled to certain credits, and referring the proceedings for the statement of an account was appealable.—*Conner v. Groh*, 90 Md. 674, 45 Atl. 1024.

(d) Interlocutory orders and decrees of a court of equity affecting rights are appealable equally with final decrees.—*State*

*v. Northern & C. Ry. Co.*, 18 Md. 193. (See Code, art. 16, §§ 26, 27.)

(e) An order overruling a demurrer to a plea, if it relates merely to the form of the pleading, does not affect the substantial rights of the parties, and is not appealable.—*Danels v. Taggart*, 1 G. & J. 311.

# § 92. Adjudicating principles of cause.

# § 93. Determining action and preventing judgment.

## *Cross-Reference.*

Decisions of intermediate courts, see post, § 120.

# § 94. Assuming or refusing jurisdiction.

## *Cross-Reference.*

Review of decisions of federal courts by United States Circuit Court of Appeals, see "Courts," § 405.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

# § 95. Relating to parties or process.

## *Cross-References.*

Adjudicating principles of cause, see ante, § 92.

Affecting substantial rights, see ante, § 91.

Discretionary orders, see ante, § 87.

Determining action and preventing judgment, see ante, § 93.

Finality of decision, see ante, §§ 70, 78.

Involving merits, see ante, § 90.

(a) An order quashing the sheriff's return of service of the summons is not appealable—*Oland v. Agricultural Ins. Co.*, 69 Md. 248, 14 Atl. 669. [*Cited and annotated* in 23 L. R. A. 498, as to who may be served with process in suit against foreign corporation; in 5 L. R. A. (N. S.) 299, on exclusiveness of statutory service on person designated by foreign corporation.]

# § 96. Relating to provisional remedies.

## *Cross-References.*

Affecting substantial rights, see ante, § 91.

Determining action and preventing judgment, see ante, § 93.

Discretionary orders, see ante, § 87.

Finality of decision, see ante, § 71.

Involving merits, see ante, § 90.

Review dependent on objection below, see post, § 190.

Validity of statutes authorizing appeal, see ante, § 2.

# § 97.—In general.

### § 98.— Arrest and bail.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 99.— Attachment and garnishment.

#### *Cross-Reference.*

Persons entitled to review, see post, § 150.

(a) An order refusing to dissolve an attachment is not appealable.—*Mitchell v. Chesnut*, 31 Md. 521; *First Nat. Bank v. Weckler*, 52 Md. 30; *Parkhurst v. Citizens' Nat. Bank*, 61 Md. 254.

(b) The sufficiency of the sureties on an attachment bond is a matter left entirely to the judgment of the clerk, but the legal validity of the bond itself is a subject for review on appeal.—*Stewart v. Katz*, 30 Md. 334.

(c) The refusal of a motion for judgment of condemnation in an attachment proceeding, under act 1715, c. 40 (Code, art. 9, § 12), is an order which is appealable.—*Dawson v. Contee*, 22 Md. 27.

(d) The decision of the lower court, permitting the garnishee in an attachment cause to file pleas in bar, is not the subject-matter of an appeal.—*Barr v. Perry*, 3 Gill 313.

(e) An order dissolving an attachment is appealable.—*Washington v. Hodgskin*, 12 G. & J. 353.

(f) Under Acts 1835, cc. 346, 380 (Code, art. 5, § 27), no appeal will lie from orders granting or refusing to dissolve an injunction until the defendant has answered, and an answer ruled insufficient upon exceptions will be regarded as no answer.—*Richter v. Pue*, 9 G. & J. 475.

### § 100.— Injunction.

#### *Cross-Reference.*

Orders at chambers, see post, § 131.

(a) Code, art. 5, § 31, permits an appeal from an order refusing a preliminary injunction on an ex parte hearing.—*Safe Deposit & Trust Co. of Baltimore City v. City of Baltimore*, 121 Md. 522, 88 Atl. 267.

(b) A demurrer is an answer within Code, art. 5, § 27, permitting appeal from an order granting an injunction if an answer

be filed.—*Dixon v. Dixon*, 119 Md. 413, 86 Atl. 1042.

(c) Under Code, art. 5, § 27, allowing appeals from an order denying the dissolution of an injunction, a decree, the direct effect of which was to continue the injunction, though it did not do so in terms, amounted to a decree refusing to dissolve the injunction, and was therefore appealable.—*Conner v. Groh*, 90 Md. 674, 45 Atl. 1024.

(d) Under Acts 1868, c. 102, which added to Code, art. 5, § 31, the provision that the right of appeal in injunction proceedings shall not be prejudiced by the filing of an answer, and that the appeal shall be heard on a transcript of the bill or petition, with such other papers in the cause as may be necessary, so soon as conveniently may be after such transcript shall have been filed in the court of appeals, an appeal lies from a decree denying an injunction on the bill of complaint.—*Chesapeake & P. Tel. Co. v. City of Baltimore*, 89 Md. 689, 43 Atl. 784, 44 Atl. 1033.

(e) Plaintiff filed his bill for a preliminary injunction. An order was passed setting a day for the hearing, and restraining defendant till the hearing, when the preliminary injunction was denied. *Held*, that an appeal would lie from such refusal, under Code, art. 5, § 31.—*Bonaparte v. Baltimore, H. & L. R. Co.*, 75 Md. 340, 23 Atl. 784.

(f) An order dismissing a petition of a purchaser of mortgaged property to enjoin the attempted sale of such property is appealable.—*Schludenberg v. Robertson*, 60 Md. 602.

(g) Under a legislative provision (Code, art. 16, § 27), that an appeal may be allowed "from any order granting an injunction, or from a refusal to dissolve the same, the answer of the party appealing being first filed in the cause," a demurrer to the whole bill may be taken as an answer, for the purpose of the appeal.—*Baltimore v. Weatherby*, 52 Md. 442.

(h) No appeal will lie from an order of a court refusing to extend further time to a party to take testimony on a motion to



dissolve an injunction.—*Hill v. Reifsnider*, 39 Md. 429.

(i) Where, in an injunction suit, the court refuses to grant an order prayed for, and does not dismiss the petition, but retains it, and the subject-matter of it is reserved for the future order of the court, no appeal lies from such refusal.—*Chenowith v. Smith*, 29 Md. 18.

(j) An appeal from an order granting an injunction will be dismissed if the answer be insufficient.—*Belt v. Blackburn*, 28 Md. 227.

(k) Under Code of 1860, art. 5, § 25, providing that, in all cases where the court shall refuse to grant an injunction, he shall certify in an order his refusal, from which order an appeal may be taken, no appeal could be taken from an order refusing an injunction, where, before the injunction was refused, defendants had filed their answer.—*Barnum v. Gordon*, 28 Md. 85. (For present statutory provision, see Code, art. 5, § 31).

(l) No appeal lies from an order refusing an injunction, if an answer was filed before the application was heard and disposed of.—*Krone v. Krone*, 27 Md. 77. (For present statutory provision, see Code, art. 5, § 31).

(m) A motion to dissolve an injunction was set down for hearing. Afterwards testimony was taken under a commission, by agreement, and the case was then set down by consent for final hearing, whereupon the court continued the injunction, and reserved certain questions for further consideration. *Held*, that an appeal from this order would lie, as matter of right, under Act 1835, cc. 346, 380 (Code, art. 5, § 27).—*Griffith v. Clarke*, 18 Md. 457.

(n) The right to appeal from a refusal to order an injunction upon an ex parte hearing on the bill alone, given by Code 1860, art. 5, § 25, does not exist where the complainant postpones the hearing on the application for an injunction until the answer has been filed and evidence bearing upon right to have the injunction has been procured and used at the hearing.—*Steigerwald v. Winans*, 17 Md. 62. (For present

statutory provision, see Code 1911, art. 5, § 31).

(o) In injunction proceedings, where the sufficiency of the answer below is a prerequisite to appeal, an appeal may lie before the trial court has passed upon such sufficiency, as it is the duty of the appellate court, not the trial court, to determine whether or not an appeal will lie.—*Keighler v. Savage Mfg. Co.*, 12 Md. 383, 71 Am. Dec. 600.

(p) Acts 1835, c. 380 (Code, art. 5, § 27), providing that appeals will not lie from an order granting an injunction until after answer filed, is not changed by Acts 1853, c. 37 (Code, art. 5, § 29), providing that when an appeal is taken from an order granting an injunction, etc., the operation of the injunction suit should cease, as such act only regulates the consequences of an appeal when taken.—*Blondheim v. Moore*, 11 Md. 365.

(q) An appeal from an order of a court having equity jurisdiction, granting an injunction, will not lie until after answer filed.—*Blondheim v. Moore*, 11 Md. 365.

(r) The third section of Acts 1835, c. 380 (Code, art. 5, § 27), shows that a defendant who has answered a bill for an injunction may appeal from the granting or refusal to dissolve it upon motion, without waiting for the answers of his co-defendants.—*Barnes v. Dodge*, 7 Gill 109. [*Cited and annotated* in 30 L. R. A. 127, on injunction against execution sales or other proceedings under final process; in 30 L. R. A. 787, on injunction against judgments obtained by fraud, accident, mistake, surprise, and duress.]

(s) Under Acts 1835, c. 380 (Code, art. 5, § 27), providing that, on an issuance of an injunction, defendant may appeal, his answer being first filed, imposes on defendant, as one of the conditions on which his right to appeal depends, the filing of an answer, but does not authorize the court, on appeal from the granting of an injunction to examine the answer.—*Wagner v. Cohen*, 6 Gill 97, 46 Am. Dec. 660.

(t) Appeal or writ of error will not lie to revise an order dissolving an injunction.

—*Dorsey v. Smith*, 2 H. & G. 185; *Marshall v. City of Baltimore*, 8 G. & J. 214. (See Code, art. 5, § 27.)

(u) After an injunction had been granted, prohibiting the defendant from obstructing a public road, the commissioners of Baltimore county, in which the road lay, authorized him to shut it up. The defendant, who owned the land over which the road passed, without moving or waiting for a dissolution of the injunction, shut it up. The chancellor excused this violation of the injunction upon the ground that the defendant had misapprehended his rights, but ordered him to place the road in its former condition; and, failing to do this, he was brought before the chancellor by attachment. The injunction was then continued until final hearing or further order, and the defendant ordered to remove the obstruction, and fined for his contempt. From these proceedings the defendant appealed. *Held*, that the order of the commissioners, directing and authorizing the old road to be shut up, placed the premises over which it ran under the control of the defendant, and gave him the same right of user of that land as he had of the rest of his estate, and that the subsequent orders of the court of chancery so affected his rights and interests therein as to form a fit subject of appeal.—*Williamson v. Carnan*, 1 G. & J. 184

(v) An appeal does not lie from an order dissolving an injunction.—*Slye v. Llewellyn*, 1 Bland 18, note. (See Code, art. 5, § 27.)

### § 101.—Receiver.

#### *Cross-Reference.*

Review dependent on exception to order appointing, see post, § 257.

(a) An order denying a motion of ne recipiatur and refusing to permit an answer to be filed to a petition in receivership proceedings is not appealable under the Code.—*United States v. Poe*, 120 Md. 89, 87 Atl. 933.

(b) A demurrer is an answer within Code, art. 5, § 27, permitting appeal from an order appointing a receiver if an answer is filed.—*Dixon v. Dixon*, 119 Md. 413, 86 Atl. 1042.

(c) An order directing the receiver to re-

tain a sum to abide liquidation of a suit pending against him and to defend that suit is an appealable order.—*Emory v. Faith*, 113 Md. 253, 77 Atl. 386.

(d) B., assignee of a note payable to C., an insolvent corporation, obtained judgment in the superior court against M. on his liability, as stockholder of C., for the indebtedness of C. on the note. M., on paying the note, obtained an order allowing him to withdraw it, that he might file it as a claim against C. in the insolvency proceedings against it in the circuit court, which he did. *Held*, that an order denying the petition of the receivers of C., filed in the case in the superior court, to require M. to return the note to such court—it then to be surrendered to them as an asset of C.—was not appealable; it determining no right between the parties, and the circuit court being the place for the receivers to assert their claim.—*Penniman v. Miners' & Merchants' Bank*, 100 Md. 453, 59 Atl. 757.

(e) Under Code, art. 5, § 27, providing for an appeal from an order appointing a receiver, an order refusing to rescind the order of appointment, not being in the nature of a final decree, is not appealable.—*R. Frank Williams Co. v. United States Baking Co.*, 86 Md. 475, 38 Atl. 990.

(f) An order removing a receiver is not an appealable order.—*Cain v. Warford*, 7 Md. 282; *Washington City & P. L. R. Co. v. Southern Md. R. Co.*, 55 Md. 153; *Hull v. Caughy*, 66 Md. 104, 6 Atl. 591.

(g) Although no appeal lies from a simple order requiring property to be delivered to a receiver, yet if the order determines a question of right between the parties to the suit, and directs the statement of an account upon the principle of such determination, such order is appealable.—*Reeder v. Machen*, 57 Md. 56.

(h) Under a legislative provision that an appeal may be allowed "from any order appointing a receiver, the answer of the party appealing being first filed in the cause," a demurrer to the whole bill may be taken as an answer, for the purpose of the appeal.—*Baltimore v. Weatherby*, 52 Md. 442.

(i) An appeal from an order of a court having equity jurisdiction, appointing a receiver, will not lie until after answer filed.—*Blondheim v. Moore*, 11 Md. 365.

(j) An order discharging a receiver, and directing personal property in his hands to be delivered over to an administrator pending suit, is appealable.—*Cain v. Warford*, 7 Md. 282.

(k) *Quære*, whether an appeal lies, upon the part of parties in interest, from an order discharging a receiver.—*In re Colvin*, 3 Md. Ch. 278.

(l) A receiver may not, on his own account, appeal from an order discharging him and directing him to account.—*In re Colvin*, 3 Md. Ch. 278. [*Cited and annotated in 38 L. R. A. (N. S.) 231, on jurisdiction of equity when the only relief sought is an injunction or receiver to preserve status quo, pending action or proceedings before other tribunal.*]

### § 102. On demurrer.

#### *Cross-References.*

Adjudicating principles of cause, see ante, § 92.

Determining action and preventing judgment, see ante, § 93.

Finality of decision, see ante, §§ 70, 78.

Order for judgment on demurrer, see post, § 133.

(a) An appeal lies from an order overruling a demurrer to a bill.—*Stinson v. Elliott City & Clarksville Co.*, 109 Md. 111, 71 Atl. 527.

(b) An appeal lies from an order overruling a demurrer to a bill in equity, where the demurrer goes to the entire bill.—*Chappell v. Funk*, 57 Md. 465; *Hecht v. Colquhoun*, *Ibid.* 563.

(c) Where there is a demurrer and issues of fact, and the demurrer is ruled against the party pleading it, and the issues of fact are tried, and a final judgment rendered against the same party, he may appeal from the judgment on the demurrer.—*Schindel v. Suman*, 13 Md. 310.

(d) It is not necessary for the consideration of the court that appeals should be taken severally to the rulings of the court sustaining demurrers to the various pleas.—*Lawson v. Snyder*, 1 Md. 71.

(e) Where a bill in equity was demurred to, the demurrer overruled, the defendants ordered to answer, aver, or plead by a given day, and, upon their failing to answer, a final decree was passed against them, which, among other things, decreed a sale, it was held that, under act of 1841, c. 11, § 1 (Code, art. 5, § 27), they might prosecute an appeal.—*White v. White*, 5 Gill 359.

### § 103. On motion relating to pleadings.

#### *Cross-References.*

Affecting substantial rights, see ante, § 91.

Determining action and preventing judgment, see ante, § 93.

Finality of decision, see ante, § 70.

Involving merits, see ante, § 90.

Order for judgment on pleadings, see post, § 133.

(a) The right of appeal from an order overruling a plea to the whole bill filed by two of several defendants could not be sustained under Code, art. 16, § 205, providing that the trial court might pass an order and direct that such question of law as is to be decided in advance be raised for the opinion of the court either by special case or in such other manner as the court deems expedient, where no such order was passed.—*Hall v. Hughes*, 119 Md. 487, 87 Atl. 387.

(b) No appeal lies from the refusal of the trial judge in an action at law to permit the amendment of a pleading.—*Anderson v. Stewart*, 108 Md. 340, 70 Atl. 228.

(c) In an attachment suit, an order allowing an amendment to a voucher is not one from which an appeal will lie; Code, art. 5, § 2, providing for an appeal from any judgment or determination in an action, does not confer a right of appeal in such cases.—*Booth v. Callahan*, 97 Md. 317, 55 Atl. 625.

(d) Where petitioner for a writ of mandamus refuses to plead or traverse after his demurrer to respondent's answer is overruled, an order dismissing the petition is appealable.—*Creager v. Hooper*, 83 Md. 490, 35 Atl. 159.

(e) Where the new counts of an amended declaration are such as to constitute an entirely new case, the filing of a plea of the statute of limitations, as to such counts, cannot be regarded as an amendment of the answer, from the allowance or refusal of

which no appeal lies.—*Schulze v. Fox*, 53 Md. 37.

(f) No appeal lies from a refusal to allow an amendment of the pleadings.—*Ellicott v. Eustace*, 6 Md. 506. [*Cited and annotated* in 3 L. R. A. (N. S.) 264, on relation of new pleadings to statute of limitations]; *Deford v. State*, 30 Md. 179.

(g) An order refusing or revoking permission to file a supplemental petition is not ordinarily appealable.—*Calvert v. Carter*, 18 Md. 73.

#### § 104. Relating to witnesses, depositions, affidavits, or discovery.

##### *Cross-References.*

Adjudicating principles of cause, see ante, § 92.

Discovery as a provisional remedy, see ante, § 97.

Involving merits, see ante, § 90.

Relating to provisional remedies, see ante, § 97.

(a) *Quære*, whether, on a caveat to the recording of depositions taken under a commission to prove the bounds of lands, the proceedings could be removed from the County Court to the Provincial Court on certiorari.—*Roch v. Giles*, 1 H. & McH. 186.

#### § 105. Dismissal or nonsuit.

##### *Cross-References.*

Adjudicating principles of cause, see ante, § 92.

Determining action and presenting judgment, see ante, § 93.

Finality of decision, see ante, §§ 70, 78.

Motion to vacate as condition precedent, see post, § 238.

Opening or vacating judgment or order, see post, § 113.

Scope and extent of review on appeal, see post, § 866.

Striking cause from calendar, see post, § 106.

(a) Where, in an action on a clerk's bond to recover a deputy's salary, etc., after the amendment of the complaint, to which a demurrer had been sustained by another judge, a judge before whom the amended complaint came on a second demurrer sustained the same because of the ruling of his predecessor under a practice among the judges of the court to follow a ruling made by one of them until reversed, and the complaint was thereupon dismissed, such dismissal was not a mere pro forma order, and

was appealable.—*State v. Turner*, 101 Md. 584, 61 Atl. 334.

(b) No appeal lies to set aside a voluntary nonsuit.—*Boyd v. Kienzle*, 46 Md. 294.

(c) A defendant cannot appeal from a decree dismissing a bill against him, with costs.—*Worthington v. Hanson*, 12 Md. 418.

(d) The defendant demurred to the plaintiff's replication, and plaintiff moved to amend. The court overruled the motion. Plaintiff appealed, and the court ordered the plaintiff to join issue on the demurrer. Plaintiff made default, and a nonsuit was entered against him. *Held*, that an appeal did not lie.—*State v. Bryan*, 3 Gill 388.

#### § 106. Relating to place, time, or conduct of trial.

##### *Cross-References.*

Affecting substantial rights, see ante, § 91.

Determining action and preventing judgment, see ante, § 93.

Discretionary orders, see ante, § 87.

Finality of decision, see ante, § 70.

Involving merits, see ante, § 90.

(a) The refusal of the court to grant a continuance is not a ground of appeal to the appellate court.—*Cumberland Coal & Iron Co. v. McKaig*, 27 Md. 258; *Hopkins v. State*, 53 Md. 502.

(b) An order refusing to change the venue, upon a proper application under the statute, is appealable.—*Griffin v. Leslie*, 20 Md. 15.

(c) There is no right of appeal from a ruling on a motion for a change of venue.—*Davis v. State*, 3 H. & J. 154.

#### § 107. Relating to reference of cause.

##### *Cross-References.*

Adjudicating principles of cause, see ante, § 92.

Determining action and preventing judgment, see ante, § 93.

Finality of decision, see ante, §§ 70, 78.

Involving merits, see ante, § 90.

(a) An appeal lies from the judgment of a court setting aside an award made by referees to whom the case was referred under a rule of the court.—*State v. Stewart*, 12 G. & J. 456; *Garitee v. Carter*, 16 Md. 309.

#### § 108. Relating to verdict or findings.

##### *Cross-References.*

Affecting substantial right, see ante, § 91.

Determining action and preventing judgment, see ante, § 93.

Involving merits, see ante, § 90.

(a) The refusal of the court below to grant a new trial is not a matter upon which a writ of error lies.—*Sittig v. Birkestack*, 38 Md. 158.

(b) An appeal lies from an order denying an application to vacate a decree secured upon ex parte testimony, and to let in an answer.—*Oliver v. Palmer*, 11 G. & J. 137.

#### § 109. On motion for judgment notwithstanding verdict.

##### *Cross-References.*

Determining action and preventing judgment, see ante, § 93.

Finality of decision, see ante, § 70.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 110. On motion for new trial.

##### *Cross-References.*

Discretionary action, see ante, § 87.

Finality of decision, see ante, §§ 70, 78.

Involving merits, see ante, § 90.

Time for appeal, see post, §§ 339, 347.

Vacating order of dismissal or nonsuit as within statute allowing appeal from order on motion for new trial, see post, § 113.

##### *Annotation.*

Review by appellate court of ruling of the trial court on motion to grant a new trial in action for bodily injuries on ground of inadequacy of damages awarded.—28 L. R. A. (N. S.) 130, note.

(a) The general rule is that no appeal will lie from the refusal of the court to grant a new trial.—*Brinsfield v. Howeth*, 110 Md. 520, 73 Atl. 289.

(b) A motion to vacate a verdict is a motion for a new trial, and hence an appeal will not lie to the Court of Appeals from a ruling thereon.—*Stern v. Bennington*, 100 Md. 344, 60 Atl. 17, 108 Am. St. Rep. 433.

(c) The refusal of the court below to grant a new trial is not a matter upon which a writ of error lies.—*Sittig v. Birkestack*, 38 Md. 158. See also *Sauer v. Schupenberg*, 33 Md. 288, 3 Am. Rep. 174.

(d) An appeal lies from an order denying an application to vacate a decree secured upon ex parte testimony, and to let in an answer.—*Oliver v. Palmer*, 11 G. & J. 137.

#### § 111. Partial judgment or decision.

##### *Cross-References.*

Finality of decision, see ante, § 80.

Review of part of judgment or order, see post, § 122.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 112. Void judgment or order.

##### *Cross-References.*

Finality of decision, see ante, § 68.

Motion to vacate as condition precedent, see post, § 238.

Want of jurisdiction of trial court as affecting appellate jurisdiction, see ante, § 20.

(a) Where the proceedings on an issue directed by the orphans' court are ended by an order to dismiss, the case is no longer within the jurisdiction of the court; and an appeal will lie from a subsequent void order directing the entry of dismissal to be stricken out, and the case brought up by regular continuance, and entered on the docket.—*Price v. Taylor*, 21 Md. 356. [Cited and annotated in 33 L. R. A. (N. S.) 734, on right to appeal from void judgment, decree or order.]

#### § 113. Opening or vacating judgment or order.

##### *Cross-References.*

Affecting substantial rights, see ante, § 91.

Determining action and preventing judgment, see ante, § 93.

Discretionary orders, see ante, § 87.

Finality of decision, see ante, § 82.

Involving merits, see ante, § 90.

Scope and extent of review, see post, § 876.

Under statutes authorizing appeals from order granting new trial, see ante, § 110.

Special orders after final judgment, see ante, § 82.

(a) Under Acts 1886, p. 309, c. 184 (Balto. City Code, § 317), providing that any action of the court in relation to a judgment rendered by it, if taken within 30 days after the entry of such judgment, shall have the same effect as if, under the former practice, it had been taken during the term at which the judgment was entered, an appeal does not lie from an order granting a motion to set aside a judgment made within 30 days after the entry of the judgment; a judgment under the former practice being subject to the control of the court until the lapse of the term at which it was rendered.—*Laubheimer v. Johnson*, 98 Md. 685, 57 Atl. 539.

(b) An appeal will not lie from an order of the trial court striking out a judgment of condemnation in an attachment case during the term at which it was entered, it being discretionary.—*Sloan v. Locust Point Co.*, 71 Md. 335, 18 Atl. 534.

(c) An order of court refusing to reinstate a case brought by an infant, which has been dismissed by an attorney appointed by such infant, is appealable.—*Wainwright v. Wilkinson*, 62 Md. 146.

(d) Where, by mistake, a judgment was entered as of Sunday, the judgment may be stricken out on motion, and entered as of another day; and from a refusal to grant such motion an appeal may be taken.—*Ecker v. First Nat. Bank*, 62 Md. 519.

(e) An appeal does not lie from an order striking out a judgment on a motion made at the same term at which the judgment was rendered.—*Townshend v. Chew*, 31 Md. 247; *Bridges v. Adams*, 32 Md. 577; *Hall v. Holmes*, 30 Md. 558; *Hunting v. Walter*, 33 Md. 60; *Craig v. Wroth*, 47 Md. 281; *McLaughlin v. Ogle*, 53 Md. 610; *Glenn v. Allison*, 58 Md. 527.

(f) An appeal lies from an order overruling a motion to strike out, for cause, a verdict of a jury of inquisition on default, and judgment thereon.—*Walsh v. State*, 53 Md. 539.

(g) An appeal will lie from an order striking out a judgment on the ground that the court had no jurisdiction, and remanding the record to the court whence the cause had been removed, though the motion to strike out was made during the term at which the judgment was rendered.—*Kimball v. Harman*, 34 Md. 401.

(h) No appeal lies from an order striking out a judgment rendered at the same term; but where the order struck out, not only a final judgment rendered at that term, but also a judgment by default rendered at the preceding term, an appeal lies, but brings up for review only the action of the court in striking out the judgment by default.—*State v. Steibel*, 31 Md. 34.

(i) From an order overruling a motion to strike out a judgment, an appeal lies,

whether the motion be made during the same term, or at a term subsequent to that at which the judgment is rendered.—*Hall v. Holmes*, 30 Md. 558.

(j) Where, a final decree having been passed in a cause, the court at the same term passed an order vacating the decree, but requiring the defendant to file his answer before the succeeding term, under the penalty of a reaffirmance of the decree, and to pay the costs up to the time of the order, it was held that no appeal lay from such order.—*Wylie v. Johnston*, 29 Md. 298.

(k) A judgment by default, by the lapse of the term at which it was entered, without motion or other proceeding had upon it, becomes final and absolute, and the plaintiffs are entitled to an appeal from an order of court striking it out.—*Henderson v. Gibson*, 19 Md. 234.

(l) In an action of trover, judgment by default, for want of a plea, was entered; and subsequently, on an inquisition, a final judgment was rendered thereon, and execution issued, which was outstanding. After the lapse of a term, the defendant moved to strike out the final judgment, for fraud and irregularity; and the court ordered the judgment and inquisition to be struck out, but allowed the judgment by default to stand, with leave to the plaintiff to proceed thereon, and have another inquisition, and from this order the plaintiff appealed. Held, that the appeal would lie.—*Green v. Hamilton*, 16 Md. 317, 77 Am. Dec. 295.

(m) An appeal lies from an order of court setting aside a judgment.—*Hawkins v. Bowie*, 9 G. & J. 428. [*Cited and annotated in 18 L. R. A. 840, on writ of error coram nobis.*]

(n) An order denying a motion to set aside a judgment by default is not appealable.—*Hawkins v. Jackson*, 6 H. & J. 151. (On this point see Brantly's note to this case.)

#### § 114. Confirming or carrying out or enforcing previous decision.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 115. Relating to execution or judicial sale.

#### *Cross-References.*

Affecting substantial rights, see ante, § 91.

Discretionary orders, see ante, § 87.

Finality of decision, see ante, § 82.

(a) An appeal lies from an order making a substitution of another bidder at an execution sale for the person returned to the court as purchaser.—*Kinnear v. Lee*, 28 Md. 488.

(b) An appeal lies from an order striking out a judgment against a casual ejector, quashing the writ of habere facias possessionem, and directing regular continuances to be entered in the cause from the date of the judgment.—*Dennis v. Kelso*, 28 Md. 333.

### § 116. In proceedings supplementary to execution.

#### *Cross-Reference.*

Affecting substantial right made on summary application after judgment, see ante, § 91.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 117. In proceedings for review.

#### *Cross-References.*

Affecting substantial rights, see ante, § 91.

Decisions of intermediate courts, see post, § 120.

Finality of decision, see ante, § 82.

Order on motion to amend record, see post, § 648.

(a) After defendant had appealed from a decree in plaintiff's favor, plaintiff filed a petition in the trial court, alleging that the defendant had not transmitted the record within the statutory time, and praying that the appeal be dismissed. *Held*, that no appeal lay from an order dismissing such petition, since such order did not affect plaintiff's right to move in the Court of Appeals for a dismissal of defendant's appeal.—*McLaughlin v. McLaughlin*, 26 Atl. 509. (Not reported in the Maryland Reports.)

(b) Appeal will not lie to the refusal of the trial court to sign and seal a bill of exceptions, or to incorporate therein certain evidence, unless such refusal is based upon

the opinion of the trial court that the evidence is irrelevant.—*Carey v. Merryman*, 46 Md. 89.

(c) The refusal of the trial court to incorporate into a bill of exceptions evidence offered after the bill has been signed and sealed is not reviewable.—*Donohue v. Shedrick*, 46 Md. 226.

(d) No appeal lies from an order refusing to sign and seal bills of exceptions.—*Marsh v. Hand*, 35 Md. 123; *Donohue v. Shedrick*, 46 Md. 226.

(e) An appeal will not lie from the judgment of a county court superseding a writ of certiorari, by which proceedings before magistrates, against a tenant holding over, were brought before said court.—*Crockett v. Parke*, 7 Gill 237.

### § 118. In proceedings after decision of appellate court.

#### *Cross-Reference.*

Appeal from judgment entered pursuant to mandate from appellate court, see ante, § 14.

(a) No appeal lies from a decree rendered by the court below in strict conformity to instructions from the appellate court.—*Stonebraker v. Stonebraker*, 34 Md. 444.

(b) When a decree of a circuit court is reversed in the appellate court, and the cause remanded with instructions, and the circuit court passes a new decree in strict conformity to the instructions, such decree has the force and effect of a judgment of the appellate court, and an appeal therefrom cannot be entertained.—*Graff v. Barnum*, 33 Md. 283.

(c) Where the Court of Appeals reversed a decree of the court of chancery, and simply directed that the defendants should account with the complainants for a specified proportion of certain stock and profits, and that the chancellor should have the account stated by the auditor, and pass such decree as might be necessary, etc., and an account was so stated, and a decree passed for the payment of the sum thus found to be due to the complainant, an appeal lay from such decree.—*Gover v. Hall*, 3 H. & J. 43.

### § 119. Relating to costs.

#### *Cross-References.*

Affecting substantial right in special proceeding, see ante, § 91.

As affected by amount in controversy, see ante, § 45.

Discretionary action, see ante, § 87.

Effect of right of review on appeal from final judgment, see ante, § 74.

Error as to costs as ground of reversal, see post, § 1171.

Finality of decision, see ante, §§ 78, 82.

Form of remedy, see ante, § 4.

Motion to vacate as condition precedent, see post, § 239.

Vacating orders, see ante, § 113.

(a) Appeal will not lie from an order in an action at law refusing to require a non-resident plaintiff to furnish security for costs, it being not final in its nature, nor settling any substantial right of the defendant, nor denying the means of further defending the suit.—*Boggs v. Inter-American Mining & Smelting Co.*, 105 Md. 371, 66 Atl. 259; *Inter-American Mining & Smelting Co. v. Boggs*, *Ibid.*

(b) An order in an equity suit denying defendant the right to have the rule for security for costs laid is appealable, since it denies a statutory right.—*Watson v. Glasie*, 95 Md. 658, 53 Atl. 428.

(c) Complainant cannot appeal from an order directing that, unless he dismisses his bill, he shall pay alimony and a counsel fee.—*Chappell v. Chappell*, 82 Md. 647, 33 Atl. 650.

(d) The judgment of the orphans' court as to costs where issues are sent to a law court for trial is final and not appealable.—*Brown v. Johns*, 62 Md. 333.

(e) An appeal lies from the disallowance of commissions to a trustee appointed by the court to sell mortgaged premises.—*Gustav Adolph Bldg. Ass'n v. Kratz*, 55 Md. 394.

(f) No appeal lies from the overruling of a motion by the defendant to require the plaintiff to pay certain costs before he be allowed to proceed further with the prosecution of the cause.—*Boor v. Wilson*, 48 Md. 305.

(g) The appellate court will not consider an appeal which involves only a question of costs.—*Columbian Bldg. Ass'n v. Crump*, 42 Md. 192.

### § 120. Decisions of intermediate courts.

#### *Cross-References.*

Finality of decision, see ante, § 84.

Form and entry of judgment, see post, § 135.

Jurisdiction of trial court, see ante, § 20.

Review of facts, see post, §§ 1083, 1093-1095.

(a) In an action before a justice of the peace for Baltimore City to recover \$93.75 on account, defendant had judgment. Plaintiff appealed to the Baltimore City Court. The action was tried before a jury, and a verdict rendered for \$108.75, a sum in excess of the justice's jurisdiction. A new trial was granted, and defendant appealed. *Held*, that no appeal lies from the order of an inferior court granting or refusing a new trial.—*Kirk v. Grant*, 67 Md. 418, 10 Atl. 230. [*Cited and annotated in 28 L. R. A. 225, on voluntary credits to bring debt within court's jurisdiction.*]

(b) The decision of the Supreme Bench of Baltimore City reversing an order, made by the Baltimore City Court, denying a motion to strike out a judgment by default, made during the term at which the judgment was entered, is not appealable to the Court of Appeals.—*Merrick v. Baltimore & O. R. Co.*, 33 Md. 481.

(c) When an inferior court, sitting as an appellate tribunal, renders judgment in a cause in which it has not legally acquired jurisdiction, such judgment may be reviewed on appeal, although, if jurisdiction had been acquired, the judgment would have been final and conclusive.—*Mears v. Remare*, 33 Md. 246. [*Cited and annotated in 33 L. R. A. (N. S.) 734, on right to appeal from void judgment, decree, or order.*]

(d) Where a court is invested with appellate jurisdiction, it has power to decide whether an appeal to it is rightfully brought, and from such decision no appeal will lie.—*Hough v. Kelsey*, 19 Md. 451.

(e) No appeal lies from an appellate decision rendered by an intermediate court in the exercise of a statutory jurisdiction; but where the appellate jurisdiction is unwarrantably exercised, an appeal lies.—*State v. Mister*, 5 Md. 11.



**§ 121. Decisions conflicting with previous decisions.**

*Cross-Reference.*

See "Courts," §§ 213, 220, 231, 247.

**§ 122. Proceedings for review of part of judgment or order.**

*Cross-References.*

Effect on powers of lower court, see post, § 450.

Joinder of proceedings and double appeals, see ante, § 15.

Partial judgment or decision, see ante, § 111.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**(F) MODE OF RENDITION, FORM, AND ENTRY OF JUDGMENT OR ORDER.**

*Cross-References.*

Appeals from justices' courts, see "Justices of the Peace," § 148.

Appeals from municipal courts, see "Courts," § 190.

**§ 123. Necessity of formal judgment or order.**

*Cross-References.*

Judgment for costs without formally disposing of cause as final judgment, see ante, § 78.

Necessity for entry, see post, § 134.

Necessity for final decision, see ante, § 66.

Premature appeals, see post, § 337.

(a) Where no final judgment has been rendered in the trial court, the Court of Appeals cannot hear the case by agreement of counsel.—Hayman v. Lambden, 97 Md. 33, 54 Atl. 962.

(b) An appeal will not lie from a court's opinion, as distinguished from the decree.—Chappell v. Chappell, 82 Md. 647, 33 Atl. 650.

(c) Where there are several defendants in a suit in equity, as to some of whom a decree pro confesso, and as to others an interlocutory decree, has been passed, an entry on the record as follows: "Viewing the whole case as it is presented, this bill cannot be sustained, and must be dismissed with costs as to the defendant, P.," is an incomplete act, simply announcing the intentions of the court, and not a decree from which an appeal will lie.—Phillips v. Pearson, 27 Md. 242.

**§ 124. By confession.**

*Cross-References.*

Necessity for motion presenting objection in lower court, see post, § 238.

Scope and extent of review on appeal from judgment by confession, see post, § 865.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 125. On consent, offer, or admission.**

*Cross-Reference.*

Consent to judgment or order as waiver of right of review, see post, § 154.

(a) A judgment, order or decree, entered by consent, will not support an appeal or writ of error.—Williams v. Williams, 7 Gill 302; Gable v. Williams, 59 Md. 46.

(b) The agreement for a decree in a mortgage is to be regarded only as a consent to dispense with the intermediate proceedings of subpoena and answer, in order to facilitate a decree, and not that the decree shall be binding at all hazards.—Williams v. Williams, 7 Gill 302.

(c) An appeal will lie from a decision which settles a question of right between the parties, though entered by consent.—Chesapeake Bank v. McClellan, 1 Md. Ch. 328.

**§ 126. On submission of controversy or agreed case.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 127. By default.**

*Cross-References.*

Effect of failure to answer, see post, § 153.

Finality of default judgment, see ante, §§ 76, 80.

Necessity for motion presenting objection in lower court, see post, § 238.

Opening or vacating judgment, see ante, § 113.

Scope and extent of review on appeal from judgment by default, see post, § 865.

(a) Where, after judgment by default, the damages are assessed by an inquisition, an appeal lies.—Forrester v. Sisco, 49 Md. 586.

(b) An appeal in chancery proceedings cannot be taken from a final decree rendered upon consent of appellant.—In re Ringgold, 1 Bland 5.

**§ 128. On ex parte proceeding.***Cross-Reference.*

Motion to vacate as condition precedent, see post, § 238.

(a) Ex parte proceedings in the orphans' court, by which manumitted slaves are hired out or sold for payment of debts, are subject to review.—*Cornish v. Willson*, 6 Gill 299.

**§ 129. On motion or summary proceeding.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 130. On trial of issues.**

(a) When questions of law appear by the record to have been raised and decided at the trial of a cause by the court without a jury, under Const. 1864, art. 4, § 6 (Const. 1867, art. 4, § 8), the right of appeal from the judgment is clear.—*Tinges v. Moale*, 25 Md. 480, 90 Am. Dec. 73.

**§ 131. On proceedings at chambers or in vacation.***Cross-Reference.*

Estoppel to object to proceedings at chambers, see post, § 884.

**§ 132. Pro forma judgment or order.****§ 133. Order for judgment.***Cross-Reference.*

In intermediate courts, see post, § 135.

**§ 134. Entry of judgment or order.***Cross-References.*

Consent of parties conferring jurisdiction of unentered order, see ante, § 21.

Effect on time for taking appeal or other proceeding for review, see post, § 347.

Entry as essential to finality, see ante, § 76.

Necessity for final decision, see ante, § 66.

Necessity for formal judgment or order, see ante, § 123.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 135. Findings and conclusions of intermediate courts.***Cross-Reference.*

Finality of decision, see ante, § 84.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**IV. RIGHT OF REVIEW.***Cross-References.*

Parties to appeal or writ of error, see post, §§ 321-336.

Accounting of executor or administrator, see "Executors and Administrators," § 510.

Actions relating to wills or probate, see "Wills," § 395.

Allowance of claims against decedent's estate, see "Executors and Administrators," § 256.

Appeal by beneficiaries improperly made parties in action for death, see "Death," § 108.

Appeal from judgment confirming municipal improvement assessment, see "Municipal Corporations," § 508.

Appeals from justices' courts, see "Justices of the Peace," § 149.

Audit and allowance of claims against counties, see "Counties," § 205.

Bankruptcy proceedings, see "Bankruptcy," §§ 391, 443, 457.

Bastardy proceedings, see "Bastards," § 92.

Condemnation proceedings, see "Eminent Domain," § 254.

Criminal prosecutions, see "Criminal Law," §§ 1024, 1026.

Decisions of patent office, see "Patents," § 113.

Drainage proceedings, see "Drains," § 36.

Election contests, see "Elections," § 305.

Habeas corpus proceedings, see "Habeas Corpus," § 113.

Highway proceedings, see "Highways," §§ 58, 72, 77.

In actions by or against husband or wife, see "Husband and Wife," § 243.

In municipal courts, see "Courts," § 190.

In proceedings for appointment of administrator, see "Executors and Administrators," § 20.

Insolvency proceedings, see "Insolvency," § 175.

In suits for divorce, see "Divorce," § 178.

In United States Circuit Court of Appeals, see "Courts," § 405.

In United States Supreme Court of decisions of state courts, see "Courts," § 395.

Mandamus proceedings, see "Mandamus," § 187.

Of grant or refusal of license, see "Intoxicating Liquors," § 75.

Probate proceedings, see "Wills," § 359.

Proceedings for sale of decedent's realty, see "Executors and Administrators," § 358.

**(A) PERSONS ENTITLED.***Cross-References.*

Parties entitled to allege error, see post, §§ 877-884.

Requisites of record, see post, § 497.

Right of state to review dependent on whether proceeding is civil or criminal, see ante, § 41.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

Authority of agent to appeal, see "Principal and Agent," § 113.

Right of abutting owner to appeal from judgment against city for injuries from defect in adjacent street, see "Municipal Corporations," § 825.

Writ of error by town to review judgment depriving it of right to exercise its franchises over part of territory granted by Legislature, see "Towns," § 9.

### § 136. Nature and grounds of right.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 137. Parties of record.

#### § 138.—In general.

(a) The right to appeal is not limited to technical parties, but may be exercised by anyone upon whose interests the decree or order has a direct tendency to operate injuriously.—*Stevenson v. Shriver*, 9 G. & J. 324 (appeal from orphans' court); *Hall v. Jack*, 32 Md. 253 (appeal from equity court).

#### § 139.—Nominal and unnecessary parties.

##### *Cross-Reference.*

Proper parties, see post, § 322.

(a) Where a replevin bond was given by the equitable plaintiffs on behalf of the legal plaintiff, such fact was sufficient to create a presumption that the entry of the suit to their use was to protect them, and that the legal plaintiff still retained an interest which justified an appeal by him.—*Anderson v. Stewart*, 108 Md. 340, 70 Atl. 228.

#### § 140.—Parties not served with process.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 141.—Representative or official capacity.

##### *Cross-References.*

Aggrieved by judgment, see post, § 151.

See also, post, §§ 147, 150.

(a) The stockholders of a building association agreed that each stockholder might elect to receive the book value of his shares in cash in the order in which his shares might be filed for redemption, to be paid as rapidly as the receipts permitted, or exchange his shares for bonds of the associa-

tion payable in 1912, with interest payable semi-annually, and to be a lien on the assets after payment of those who elected to take the book value of the stock. The association was dissolved, and appellees, who had elected to receive cash for their stock, were allowed a preference and priority to the payment of any sums from the assets to the holders of the bonds. *Held*, that the receiver had no right of appeal from an order ratifying such allowance, since it merely affected the distribution of the funds in his hands.—*Knabe v. Johnson*, 107 Md. 616, 69 Atl. 420.

(b) A guardian ad litem is a party within Code, art. 5, § 26, which defines the right of appeal by parties in equity cases.—*Thomas v. Safe Deposit & T. Co.*, 73 Md. 451, 23 Atl. 3; *Brewer v. Same*, *Ibid*; *Thomas v. Levering*, *Ibid*.

(c) An attorney has no right, in his own name, and on his own motion, to appeal from an order or judgment of the court below affecting the interests of his client.—*National Park Bank v. Lanahan*, 60 Md. 477.

(d) A trustee appointed to make a sale under a decree of the court of chancery may, in his character as such, and for the benefit of those interested in the fund who are aggrieved by an erroneous order for its payment or distribution, appeal to the appellate court.—*Ellicott v. Ellicott*, 6 G. & J. 35.

(e) Although proceedings in chancery are informal and irregular as to the admission of parties, yet, where the decree of the court below would be final and conclusive on representatives of a lunatic who have become parties, an appeal by those representatives will be sustained.—*Moore v. White*, 4 H. & J. 548.

#### § 142.—States, political divisions, boards, or officers.

##### *Cross-References.*

Appealable interest, see post, § 150.

Decisions of intermediate courts, see post, § 152.

##### *Annotation.*

Right of state to appeal in criminal case.—19 L. R. A. 342, note.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 143.—Interveners and claimants.***Cross-Reference.*

Interveners for purpose of appeal, see post, § 149.

(a) Under Code, art. 5, § 26, permitting an appeal by a party from a final decree or order in equity, an applicant for a receiver in one suit is not entitled to appeal from the action of a separate court in a subsequent suit to which he was merely a special intervener to question the jurisdiction of the latter court to entertain a suit for the same purpose.—*Preston v. Poe*, 116 Md. 1, 81 Atl. 178.

**§ 144.—Effect of dismissal as to parties.***Cross-References.*

Party dismissed as party aggrieved, see post, § 151.

Proper parties, see post, § 322.

**§ 145.—Separate appeals by different parties.***Cross-References.*

Appellants or plaintiffs in error in separate proceeding, see post, § 323.

Separate appeals in related causes in general, see ante, § 16.

**§ 146.—Appeals between co-parties.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 147. Privity with parties.**

(a) A stockholder cannot appeal from a judgment against the corporation.—*Preston v. Poe*, 116 Md. 1, 81 Atl. 178.

**§ 148. Persons other than parties or privies.***Cross-References.*

Decisions of intermediate courts, see post, § 152.

Effect of dismissal, see ante, § 144.

Form of remedy for review, see ante, § 5.

Persons aggrieved, see post, § 151.

Persons concluded by judgment, see post, § 151.

Proper parties, see post, § 322.

Appeal by witness in criminal case from order as to costs, see "Criminal Law," § 1023½.

(a) The Maryland statute (Code, art. 5, § 26) providing that an appeal shall be allowed from any final decree, or order in the nature of a final decree, passed by a court of equity, by any one or more of the persons parties to the suit, with or without the as-

sent or joinder of co-plaintiffs or co-defendants in such appeal, was designed to extend, and not to limit, the right of appeal, and cannot be construed as restricting that right, in all cases, to such persons only as are technical parties to the suit.—*Hall v. Jack*, 32 Md. 253.

(b) Under Acts 1864, c. 156 (Code, art. 5, § 26), which allows an appeal from a final decree by a party to the suit, with or without the assent or joinder of co-plaintiffs or co-defendants in such appeal, a person who claims an interest in a fund in controversy, and files his petition for leave to intervene, may appeal from the decree dismissing his petition.—*Hall v. Jack*, 32 Md. 253.

(c) One not a party or privy to the record cannot appeal, bring error, or allege exceptions.—*McKim v. Mason*, 3 Md. Ch. 186.

**§ 149. Interveners for purpose of appeal.***Cross-References.*

Interveners in action, see ante, § 143.

Intervention on appeal, see post, § 329.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 150. Interest in subject-matter.***Cross-References.*

Allegations in petition, affidavit, or other application, see post, § 361.

Denial of interest as bar to appeal, see post, § 153.

Dismissal for want of interest, see post, § 780.

Necessity of showing in record, see post, § 497.

Waiver of objections, see post, § 168.

In disbarment proceedings, see "Attorney and Client," § 57.

Right of bankrupt, see "Bankruptcy," § 391.

After judgment or pending appeal, see post, § 330.

Effect of dismissal, see ante, § 144.

Persons aggrieved by judgments against others, see post, § 151.

(a) A foreign corporation, summoned as a garnishee of a nonresident holder of stock not actually within the state, has such an interest in the controversy as authorizes it to appeal from an adverse judgment.—*United States Express Co. v. Hurlock*, 120 Md. 107, 87 Atl. 834.

(b) Where an order directed an executrix not to sell certain real estate belonging to

her testatrix under a specified advertisement on a specified day, but to sell the real estate under a different advertisement at a later date, the executrix had no sufficient interest in resisting the order to entitle her to appeal in her representative capacity.—*Smith v. Warrenfeltz*, 116 Md. 116, 81 Atl. 275.

(c) A trustee reported to the court and had ratified a sale of a farm to two parties. Afterwards he made a deed to only one of them. This grantee subsequently deeded all his property to a trustee for the benefit of his creditors, who sold the farm to various persons. A decree was rendered reforming the ratification of the sale by the court to conform to the deed, and ratifying the sale by the grantee's trustee. *Held*, that the grantee should not be deprived of an appeal from the decree because he had deeded his interest to a trustee, who had admitted the allegations of the bill upon which the decree was rendered, in his answer thereto, and had proved their truth as a witness, where by the terms of his deed to the trustee the latter was to reconvey to him the surplus remaining after his creditors' claims had been satisfied.—*Turpin v. Derickson*, 105 Md. 620, 66 Atl. 276.

(d) Where, on a judicial sale of land belonging to infants, the trustee appointed by the court in the proceedings pays the attorney who conducted the proceedings on behalf of the infants from the proceeds of the sale, and is thereafter ordered to pay such sum to the infants, he can appeal from such order.—*Senseney v. Rapp*, 94 Md. 77, 50 Atl. 416.

(e) A trustee appointed by a court of equity to sell real estate cannot appeal from an order setting aside a sale which he had reported for ratification.—*Lurman v. Hubner*, 75 Md. 268, 23 Atl. 646; *Haskie v. James*, 75 Md. 568, 23 Atl. 1030; *Betz v. Same*, *Ibid*; *Griffin v. Same*, *Ibid*.

(f) Where the record fails to show that the appellant has any interest in the subject-matter in suit, or is injured by the order appealed from, the appeal will be dismissed.—*Stewart v. Codd*, 58 Md. 86; *Glenn v. Reid*, 74 Md. 238, 24 Atl. 155.

(g) A party who has released all his inter-

est in a suit has no right to appeal from an order made therein which does not prejudice him, although it may be wrong as to other parties.—*Rau v. Robertson*, 58 Md. 506; *McDonald v. Workmen's Building Ass'n.*, 60 Md. 589.

(h) One who has ceased to have an interest in the personal estate of a decedent, by reason of the probate of the will being refused, cannot appeal from an order of the orphans' court directing the sale of such personal estate.—*Johns v. Caldwell*, 60 Md. 259.

(i) In a contest between claimants of a fund, the proceeds of a sale, the trustee appointed to make the sale cannot appeal, there being no question as to his commissions.—*Stewart v. Codd*, 58 Md. 86.

(j) A conventional trustee, appointed to sell property and distribute the proceeds among creditors, has no right of appeal from an order fixing the amount of a particular claim preferred by a creditor.—*McColgan v. McLaughlin*, 58 Md. 499.

(k) In a contest as to whether property sold by a trustee for the benefit of creditors should be regarded as partnership or individual assets, the trustee cannot appeal.—*Frey v. Shrewsbury Sav. Inst.*, 58 Md. 151; *McColgan v. McLaughlin*, *Ibid*, 499.

(l) A conventional trustee, appointed to sell property and distribute the proceeds among creditors, has the right of an appeal where his commissions as trustee are affected by the order of the court below, or where he is interested in the fund to be distributed, as a creditor, or where the question of the increase or diminution of the whole fund in his hands is involved, which increase or diminution would inure to the benefit or loss of all the creditors.—*Frey v. Shrewsbury Sav. Inst.*, 58 Md. 151.

(m) A creditor's bill alleged that the decedent was indebted to others besides complainant. *Held*, that complainant had no such interest in those claims as enabled him to appeal because of a supposed injury to the holders thereof.—*Simms v. Lloyd*, 58 Md. 477.

(n) Where a person is a mere stakeholder, and has no interest in the disposition of the

money, he is not a competent party to take an appeal.—*Hall v. Jack*, 32 Md. 253.

(o) A person having no interests affected by a judgment has no right to appeal or bring error.—*Gittings v. Moale*, 21 Md. 135.

(p) Any person on whose interests any order or decree of the orphans' court has a tendency to operate injuriously may appeal therefrom, but he must show that he has an interest in the subject-matter of such decree.—*Cecil v. Cecil*, 19 Md. 72, 81 Am. Dec. 626.

(q) A mortgage trustee may appeal from a decree affecting his commissions.—*White v. Malcolm*, 15 Md. 529.

(r) As the party in interest may appeal, so may the agent or attorney of a mortgagee, as his interest in his commissions is affected by the decree.—*White v. Malcolm*, 15 Md. 529.

(s) If the purchaser of land at sheriff's sale has the right to claim the writ of *habere facias possessionem*, such right does not, after his death, devolve upon his administrators, and they cannot appeal from an order discharging a rule laid upon the tenant in possession and claimants of the land to show cause why the writ should not issue.—*Turner v. Waters*, 14 Md. 62.

(t) In cases of insolvency, a trustee, being the representative of the creditors, may appeal, where the decision affects the interests of all the creditors, or when he has an interest, as trustee, in reference to his allowance.—*Salmon v. Pierson*, 8 Md. 297; *Teackle v. Crosby*, 14 Md. 14.

(u) The trustee of an insolvent debtor may appeal from an order erroneously rescinding his appointment.—*Teackle v. Crosby*, 14 Md. 14.

(v) Where an order is entered by the chancellor discharging a receiver of the estate of a lunatic, appointing an administrator, and directing the receiver to account to such administrator, the receiver cannot appeal.—*Ellicott v. Warford*, 4 Md. 80.

(w) An administrator is aggrieved by an order fixing his compensation at less than he was entitled to.—*Parker v. Gwynn*, 4 Md. 423.

(x) A trustee appointed to sell property may appeal for the benefit of those interested in the fund in his hands, and who are aggrieved by an erroneous order for its distribution.—*Ellicott v. Ellicott*, 6 G. & J. 35.

### § 151. Parties or persons injured or aggrieved.

#### *Cross-References.*

Application for rehearing, see post, § 833.

Effect of joinder by party not aggrieved in assignment of errors, see post, § 721.

Form of remedy, see ante, § 4.

Right of person aggrieved to appeal in name of party, see post, § 322.

In divorce suits, see "Divorce," § 178.

(a) Where defendants filed a set-off which was allowed in part only, and plaintiff was granted a non pros. because judgment in his favor was less than the court's jurisdiction, defendants were entitled to appeal.—*Baer v. Robbins*, 117 Md. 213, 83 Atl. 341.

(b) Where plaintiff's petition for mandamus was dismissed with costs at defendants' request, defendants cannot appeal from the order.—*Whitridge v. Pope*, 110 Md. 486, 73 Atl. 288.

(c) The fact that a decree in an action against a defendant reforms a ratification of sale by the court to make it conform to defendant's deed, thus benefiting him somewhat, does not deprive him of an appeal therefrom, where the decree provided for other relief, and he had filed an answer thereto denying most of the material allegations.—*Turpin v. Derickson*, 105 Md. 620, 66 Atl. 276.

(d) An administratrix pendente lite may not appeal from an order directing that property passing to testatrix's husband under the law should not be charged with expenses of a caveat contest, since she has no interest in the subject-matter, and cannot be aggrieved thereby.—*Grabill v. Plummer*, 95 Md. 56, 51 Atl. 823.

(e) Only the party or privy aggrieved by a judgment can appeal or bring error.—*Salmon v. Pierson*, 8 Md. 297; *Warehime v. Graf*, 83 Md. 98, 34 Atl. 364.

(f) Complainant in a creditors' bill cannot appeal from a judgment because of a supposed injury to the holders of other claims.—*Simms v. Lloyd*, 58 Md. 477.

(g) A party defendant to a chancery proceeding, in whose favor the bill was dismissed, and against whom no relief was granted nor liability adjudged, cannot appeal.—*Hanson v. Worthington*, 12 Md. 418.

(h) Where one defendant to a bill in equity claims that a co-defendant is liable over to him in case he is liable to the complainants, he cannot appeal from a decree dismissing the bill.—*Hanson v. Worthington*, 12 Md. 418.

(i) If a verdict and judgment in a petition for freedom are in favor of the defendant, he cannot sustain an appeal, though he has taken an exception, because he is not aggrieved by the result of the trial below.—*Ringgold v. Barley*, 5 Md. 186, 59 Am. Dec. 107.

(j) An "aggrieved party" does not necessarily mean a litigant before the court, when the order or decree is passed, but anyone on whose interests such order or decree has a direct tendency to operate injuriously.—*Stevenson v. Shriver*, 9 G. & J. 324.

#### § 152. Decisions of intermediate courts.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### (B) ESTOPPEL, WAIVER, OR AGREEMENTS AFFECTING RIGHT.

##### *Cross-References.*

Error waived in appellate court, see post, §§ 1075-1079.

Estoppel to allege particular errors, see post, §§ 882-884.

Parties divested of title or interest, see ante, § 150.

Appeals from justices' courts, see "Justices of the Peace," § 149.

Effect of placing judgment in bankrupt's schedule of debts, see "Bankruptcy," § 391.

In divorce suits, see "Divorce," § 178.

#### § 153. Inconsistent position or action in general.

(a) An appeal will lie although the defendant failed to answer in the court below, and an interlocutory decree was passed, in pursuance of which the case was conducted to a final decree.—*Lippy v. Masonheimer*, 9 Md. 310.

#### § 154. Recognition of or acquiescence in decision.

##### *Cross-References.*

Appealability of consent judgments, see ante, § 125.

##### *Annotation.*

Right to accept favorable part of a decree, judgment, or order, and appeal from the rest of it.—29 L. R. A. (N. S.) 1, note.

(a) Where creditors of a corporation become parties plaintiff to a bill for the appointment of a receiver, without filing a supplemental bill, they become parties to the original bill, and cannot appeal from orders prayed for in that bill.—*Pennsylvania Boiler Works v. Thomas C. Basshor Co.*, 120 Md. 602, 87 Atl. 1043.

(b) Creditors who file their claims in response to the notice of the receiver of a corporation, without making any objection to the proceedings, cannot appeal from the orders appointing the receiver and determining his powers.—*Pennsylvania Boiler Works v. Thomas C. Basshor Co.*, 120 Md. 602, 87 Atl. 1043.

(c) The caveators to the probate of an alleged will filed a petition praying that issues might be framed, and sent to the circuit court for trial, assigning substantial reasons for the granting of the petition, which was, however, refused and dismissed by the court. *Held*, that the caveators did not waive their right to have the action of the court reviewed on appeal by submitting to the interlocutory order, and proceeding with the hearing.—*Humes v. Shillington*, 22 Md. 346.

(d) A right of appeal from an order of court striking out a judgment by default is waived by pleadings and joinder of issue subsequently to the order excepted to.—*Henderson v. Gibson*, 19 Md. 234.

(e) Where a bill in equity was dismissed as to specific performance, but retained for compensation, on condition that the complainants, within a time prescribed, file the original contract in court for the purpose of cancellation, otherwise the bill to stand dismissed, it was *held*, that, notwithstanding this condition, the complainants had their right of appeal, and if, without any protest whatever, they had filed the agreement, they

might still have appealed, and shown cause for a modification of the decree.—*Rider v. Gray*, 10 Md. 282, 69 Am. Dec. 135.

(f) Where, on a demurrer, judgment is given against the plaintiff, and he asks and obtains leave to amend the pleading demurred to, and he does amend, he is considered as acquiescing in the judgment, and as abandoning his right to appeal—*Stoddert v. Newman*, 7 H. & J. 251. (Changed by Code, art. 75, § 8.)

### § 155. Entry by appellant of judgment or order.

#### *Cross-Reference.*

Consent to judgment or order, see ante, § 154.

### § 156. Compliance with judgment or order.

#### *Cross-Reference.*

Ground for dismissal for want of actual controversy, see post, § 781.

### § 157.— In general.

### § 158.— Payment of or on judgment.

#### *Cross-References.*

Acceptance of payment, see post, § 162.  
As preventing rehearing, see post, § 830.  
By county for expenses of constructing bridge, see "Bridges," § 10.

### § 159.— Payment of costs.

#### *Cross-Reference.*

Acceptance of payment, see post, § 163.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 160. Acceptance of benefits.

#### *Cross-References.*

Ground for dismissal for want of actual controversy, see post, § 781.  
Waiver of objections, see post, § 168.

### § 161.— In general.

(a) By § 40, art. 3, of the present constitution, it is declared that the legislature shall enact no law for the taking of private property for public use, without just compensation, agreed upon or awarded by a jury, being first paid or tendered to the owner. *Held*, that if an owner neglects to appeal from the decision of commissioners, and voluntarily receives a portion of the damages, by applying the same to the payment of benefits assessed, he will be con-

sidered to have acquiesced in the assessment of the commissioners.—*Steuart v. City of Baltimore*, 7 Md. 500.

### § 162.— Payment of or on judgment.

#### *Cross-Reference.*

Enforcement of part of judgment, see post, § 164.

(a) By § 40, art. 3, of the present constitution, it is declared that the legislature shall enact no law for the taking of private property for public use, without just compensation, agreed upon or awarded by a jury, being first paid or tendered to the owner. *Held*, that if an owner neglects to appeal from the decision of commissioners, and voluntarily receives a portion of the damages, by applying the same to the payment of benefits assessed, he will be considered to have acquiesced in the assessment of the commissioners.—*Steuart v. City of Baltimore*, 7 Md. 500.

### § 163.— Payment of costs.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 164.— Enforcement of judgment or order.

(a) A mortgagee's appeal from an order in foreclosure for default in interest and taxes, enjoining a sale, but providing that the injunction should not interfere with a foreclosure for any future default, will be dismissed, where, after taking the appeal, the mortgagee advertised the property for sale for a subsequent default under such order.—*Stewart v. McCadden*, 107 Md. 314, 68 Atl. 571.

(b) Where a plaintiff, who has appealed from a judgment in his favor for damages, withdraws his appeal, and then takes out execution upon the judgment, he thereby waives his exceptions, and cannot afterwards appeal in the same case.—*Hay v. Jenkins*, 28 Md. 564. [*Cited and annotated* in 29 L. R. A. (N. S.) 28, on right to appeal from unfavorable while accepting favorable part of decree, judgment or order.]

### § 165. Pursuing other remedy.

#### *Cross-Reference.*

Pendency of other proceeding, see ante, § 13.



(a) Where the same questions are presented in the bill of exceptions and in a motion for a new trial, the court below should, in general, require the waiver of the exceptions before entertaining the motion. If, however, they hear and decide the motion without requiring such waiver, the appellate court will, nevertheless, entertain the appeal.—*Lee v. Tinges*, 7 Md. 215.

#### § 166. Release of errors.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 167. Agreements and stipulations.

(a) The Court of Appeals recognizes to the fullest extent the right of counsel, by agreement, to waive the right of appeal, but such agreement must have some consideration to support it; otherwise, it would be nudum pactum.—*Mackey v. Daniel*, 59 Md. 484.

(b) An executor had a fund of which S. was entitled to a share, unless R., claiming under a deed of trust from S., or W., claiming by assignment from S., was entitled to it. The claimants, by written agreement, submitted the matter to the arbitrament of the three judges of an orphans' court, their judgment to be binding unless appealed from within 30 days thereafter. An appeal was taken directly from the award, and no exceptions were filed. *Held*, that the appeal would not lie.—*Strite v. Reiff*, 55 Md. 92.

(c) Where an agreement to abandon an appeal for a legal and valuable consideration, executed on the part of the appellees, was fully proved to the satisfaction of the appellate court, and not denied by appellant under oath, or attempted to be disproved, *held*, that there was no alternative but to dismiss the appeal.—*Lester v. Howard*, 24 Md. 233.

(d) If, for a legal and valid consideration, a party who has prayed an appeal agrees to withdraw it, and not thereafter to appeal, such an agreement will be enforced—*Ward v. Hollins*, 14 Md. 158.

(e) An agreement to withdraw an appeal and not thereafter to appeal, in consideration that the trustee would suspend the sale authorized by the decree for 90 days,

is nudum pactum.—*Ward v. Hollins*, 14 Md. 158.

#### § 168. Waiver of objections to right of appeal.

(a) Where the appellee applied to the orphans' court of Washington county, Md., under the act of 1845, to extend the term of service of the appellant, who, he alleged, was sold to him as a slave for a term of years, to expire on the 1st of January, 1844, and, in support of his title, offered a bill of sale for such term, manumitting the appellant thereafter, which was not recorded, it was *held*, that, the appellee having treated the appellant as a freeman in the court below, he could not, upon an appeal to the appellate court, turn round and impeach the instrument of his own title, on the ground of its defective execution and want of record, and thereby make the appellant a slave, in order to deprive him of a legal standing in the appellate court.—*Patterson v. Crookshanks*, 7 Gill, 211.

### V. PRESENTATION AND RESERVATION IN LOWER COURT OF GROUNDS OF REVIEW.

#### Cross-References.

Defects in proceedings ground for dismissal, see post, § 783.  
 Error apparent on face of record, see post, § 672.  
 Grounds for sustaining decision not considered in lower court, see post, § 856.  
 Grounds of contention not considered in lower court, see post, § 855.  
 Inconsistent position or action as waiving right of review, see ante, § 153.  
 Requisites of record, see post, §§ 499-502.  
 Reversal on court's own motion on question not raised below, see post, § 1159.  
 Accounting of executor or administrator, see "Executors and Administrators," § 510.  
 Actions relating to wills or probate, see "Wills," § 396.  
 Allowance of claims against decedent's estate, see "Executors and Administrators," § 256.  
 Appeal from judgment confirming municipal assessment, see "Municipal Corporations," § 508.  
 Appeals from justices' courts, see "Justices of the Peace," § 150.  
 Bankruptcy proceedings, see "Bankruptcy," §§ 442, 458.  
 Condemnation proceedings, see "Eminent Domain," § 255.  
 Criminal prosecutions, see "Criminal Law," §§ 1028-1068.

Drainage proceedings, see "Drains," § 36.  
 Election contests, see "Elections," § 305.  
 Failure to raise question in lower court as affecting right to costs, see "Costs," § 238.

Highway proceedings, see "Highways," § 58.

In actions by or against personal representatives, see "Executors and Administrators," § 455.

In actions of forcible entry and detainer, see "Forcible Entry and Detainer," § 43.

In admiralty, see "Admiralty," § 105.

In divorce suits, see "Divorce," § 179.

In mandamus proceedings, see "Mandamus," § 187.

Insolvency proceedings, see "Insolvency," § 176.

Presentation of objections and exceptions in original proceeding to authorize certiorari, see "Certiorari," § 36.

Probate proceedings, see "Wills," § 360.

Revocation of letters of administration, see "Executors and Administrators," § 32.

Rules of procedure as denial or infringement of right to jury trial, see "Jury," § 31.

Time and manner of raising federal question in state court for purpose of review in United States Supreme Court, see "Courts," § 396.

Writ of review, see "Review," § 12.

#### (A) ISSUES AND QUESTIONS IN LOWER COURT.

##### *Cross-References.*

Theory and grounds of decision of trial court, see post, §§ 851-856.

Criminal prosecutions, see "Criminal Law," § 1028.

#### § 169. Necessity of presentation in general.

(a) Code, art. 26, § 15, providing that on all agreed statements of facts the court may draw all inferences that the court or jury could have drawn from the facts so agreed or stated as if the same had been offered in evidence, does not relieve the parties from the necessity of properly presenting the questions of law to the trial court if it is desired to have such questions reviewed on appeal.—*Southern Maryland Nat. Bank of La Plata v. Commissioners of Charles County*, 120 Md. 7, 87 Atl. 482.

(b) Under the direct provisions of Code, art. 5, § 9, the Court of Appeals, on appeal, cannot consider a point not raised in the trial court.—*German Union Fire Ins. Co. of Baltimore v. Fred G. Clarke Co.*, 116 Md. 622, 82 Atl. 974.

(c) No question can be considered or passed upon by the Court of Appeals which does not appear by the record to have been raised in or passed upon by the court below.—*Catanzaro Di Giorgio Co. v. F. W. Stock & Sons*, 116 Md. 201, 81 Atl. 385.

(d) Acts 1825, c. 117 (Code, art. 5, § 9), which prohibits the parties from urging in the Court of Appeals any point or question which does not appear by the record to have been raised or decided in the court below, applies to cases at law, and not to cases in equity.—*Wicks v. Wescott*, 59 Md. 270.

(e) The objection, to a prayer for instructions to the jury, that it assumes a fact which ought to have been submitted to the jury, may be raised in the Court of Appeals, if the prayer is rejected by the court below.—*Newman v. McComas*, 43 Md. 70.

(f) When a prayer is defective in assuming the fact, instead of submitting it to be found by the jury, such defect may always be relied on in the Court of Appeals as a valid objection to a prayer that has been refused by the court below, though, under the appellate court rules, it cannot be urged with respect to a prayer or instruction actually granted.—*Gent v. Ensor*, 41 Md. 24.

(g) On appeal from the orphans' court, exceptions to the admissibility of evidence or the competency of witnesses are not required to be taken in that court, but may be taken and insisted on in the Court of Appeals.—*Denison v. Denison*, 35 Md. 361.

(h) Upon a writ of error, the appellate court cannot reverse any judgment on any point or question which was not directly presented to and decided by the court below, Code, art. 5, § 9, having put appeals and writs of error upon the same footing.—*Bridendolph v. Zeller*, 5 Md. 58.

(i) Act 1825, c. 117 (Code, art. 5, § 9), confines the appellate court to the decision of points adjudicated by the court below.—*Burgess v. State*, 12 G. & J. 64; *Tuck v. Boone*, 8 Gill 187.

(j) Acts 1832, c. 307 (Code, art. 5, § 36), is not a general prohibition against the raising of points in the appellate court which

were not made below, but extends only to questions relating to the competency of witnesses, the admissibility of evidence, and the sufficiency of the petition.—*Boteler v. Brookes*, 7 G. & J. 143.

(k) The appellate court will not reverse the lower tribunal upon a question not decided by the latter.—*Sasscer v. Walker*, 5 G. & J. 102, 25 Am. Dec. 272.

(l) As a motion in arrest of judgment serves as a demurrer, the whole record is brought to the view of the court, and the presentation of the particular grounds of action in the court below is not a necessary preliminary to entertaining an appeal from the order entered on such motion.—*Charlotte Hall School v. Greenwell*, 4 G. & J. 407.

#### § 170. Nature or subject-matter of issues or questions.

##### *Cross-Reference.*

Sufficiency of presentation of questions, see post, § 179.

(a) Where the question whether certain of the next of kin were entitled to share in the distribution of a fund for the payment of a claim of their ancestors was not passed on by the trial court, it could not be decided on appeal.—*Patterson v. Buchanan*, 92 Md. 334, 48 Atl. 158; *Smith v. Same*, *Ibid*.

(b) Though the record of a judgment rendered by confession upon a bill obligatory does not show that the bill was stamped as required by statute, yet it will not be reversed on appeal, unless the question was raised in the court below.—*Morgan v. Briscoe*, 4 Md. 271.

(c) In suit by general creditors against all the devisees for a sale of the decedent's real estate to pay his debts, the objection that the decree for sale was rendered without an accounting and adjudication of the claims of the creditors cannot be urged by defendant for reversal on appeal, where no demand was made by them for such accounting and adjudication in the trial court.—*Gibson v. McCormick*, 10 G. & J. 65.

#### § 171. Nature and theory of cause.

##### *Cross-References.*

Scope and extent of review as dependent on nature and theory of cause, see post, § 852.

Amendments regarded as made, see post, § 889.

Necessity for objections, see post, §§ 192-197.

(a) Where, in an action for killing plaintiff's horses at a railroad crossing, plaintiff alleged that the horses were being driven by a servant, and at the trial made no claim that the driver was not his servant, he could not urge on appeal that the driver was not his servant, and that his contributory negligence, if any, was not chargeable to him.—*Brehm v. Philadelphia, B. & W. R. Co.*, 114 Md. 302, 79 Atl. 592.

(b) In an action on a contract claimed by plaintiff to be evidenced wholly by certain writings, and in which plaintiff made no request that the question of the terms of the contract should be left to the jury on the theory that it was not entirely in writing, the failure of the court so to do cannot be considered on plaintiff's appeal.—*Joseph Joseph Bros. Co. v. Schonthal Iron & Steel Co.*, 99 Md. 382, 58 Atl. 205.

#### § 172. Grounds of action or relief.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 173. Grounds of defense or opposition.

##### *Cross-References.*

Constitutional questions, see ante, § 170.

Facts admitted or conceded in lower court, see post, § 176.

Sufficiency of presentation of questions, see post, § 179.

(a) In the absence of statute it is a general principle that where a creditor seeks the aid of a court of equity to pursue property fraudulently conveyed away, a judgment must first be obtained against the debtor before the land so conveyed away can be reached, and in such pursuit of personal property a *fi. fa.* must first have issued; but where the debtor died after suit brought, but before judgment, and the want of such lien was first objected to in the appellate court, it was *held* that it could not be sustained.—*Birely v. Staley*, 5 G. & J. 432, 25 Am. Dec. 303. (For statutory provision as to pursuit of property fraudulently conveyed see Code, art. 16, § 47.)

(b) A defense not presented at trial will not be considered on appeal.—*American Surety Co. of New York v. Spice*, 119 Md. 1, 85 Atl. 1031.

(c) An objection that copies of certain

orders were not signed by the brokers so as to bind both parties, not made at the trial, cannot be made on appeal.—*Anderson v. Stewart*, 108 Md. 340, 70 Atl. 228.

(d) In an action against a telegraph company for delay in delivering a night message, an objection that plaintiff could not recover because of a rule contained in the telegraph blanks, limiting the company's liability with reference to such messages, was unavailable on appeal, where it was not raised at the trial.—*Western Union Telegraph Co. v. N. Lehman & Bro.*, 106 Md. 318, 67 Atl. 241.

(e) In an action of ejectment, an objection that the character of the plaintiff, whether personal or representative, does not appear, cannot be taken in the appellate court, when defendant allowed plaintiff to prove at the trial, without objection that he held the property in trust.—*Shanfelter v. Horner*, 81 Md. 621, 32 Atl. 184.

(f) The objection that a plaintiff, being in fact under no incapacity, sued by "prochein ami," is an objection to the form of the process, and not to the cause of action, and cannot be taken advantage of for the first time after verdict.—*Wilms v. White*, 26 Md. 380, 90 Am. Dec. 113.

(g) Where advantage is not taken in the court below of the insufficiency of a notice to charge indorsers, it cannot be done on appeal.—*Manning v. Hays*, 6 Md. 5.

#### § 174. Capacity or right to sue or defend.

##### *Cross-Reference.*

Objections to parties in general, see post, § 187.

(a) In an action of ejectment, an objection that the character of the plaintiff, whether personal or representative, does not appear, cannot be taken in the appellate court, when defendant allowed plaintiff to prove at the trial without objection, that he held the property in trust.—*Shanfelter v. Horner*, 81 Md. 621, 32 Atl. 184.

(b) The objection that a plaintiff, being in fact under no incapacity, sued by "prochein ami," is an objection to the form of the process, and not to the cause of action, and cannot be taken advantage of for the

first time after verdict.—*Wilms v. White*, 26 Md. 380, 90 Am. Dec. 113.

#### § 175. Scope of issues or questions.

##### *Cross-Reference.*

Adhering to pleadings as construed below, see ante, § 171.

(a) Where no question was raised about the right of defendant in ejectment to prove adverse possession because he had not taken defense on warrant, the court on appeal need not pass on the question.—*Cadwalader v. Price*, 111 Md. 310, 73 Atl. 273.

(b) Although the court, under a prayer by defendant for an instruction referring to the evidence alone, may not examine the pleadings, yet it may look at the writ, which is no part of them, and say that no declaration, properly used under the form of action there disclosed, could have entitled the plaintiff to recover under the proof in the case.—*Richardson v. Milburn*, 11 Md. 340.

(c) By act 1825, c. 117 (Code, art. 5, § 9), the Court of Appeals is not permitted to affirm or reverse the judgment of the lower court upon any point which is not shown by the record to have been there raised and decided. Therefore, a prayer to instruct the jury, upon the evidence set forth, "that the plaintiff is not, in the face of his said deed, entitled to recover for any damages done his mills by reason of the construction of the canal across said public road, and the destruction of said public road," involves no question upon the pleadings in the cause, nor whether the facts proved sustain the allegations in the declaration. It only presents the isolated question of the legal effect of the deed referred to, and whether, in consequence of said deed, the testimony given in the cause showed no cause of action.—*Leopard v. Chesapeake & O. Canal Co.*, 1 Gill 222.

#### § 176. Facts admitted or conceded in lower court.

##### *Cross-References.*

Effect of failure to answer, see ante, § 153.

Estoppel, see ante, § 173.

#### § 177. Incidental and collateral matters.

### § 178. Questions in intermediate courts.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 179. Sufficiency of presentation of questions.

(a) Where one of the prayers in assumpsit on the common counts asked the court to instruct that "there was no evidence under any count in the declaration," and another prayer "referred to the material averments of the declaration," such reference to the pleadings is sufficient to permit an examination thereof.—*Catanzaro Di Giorgio Co. v. F. W. Stock & Sons*, 116 Md. 201, 81 Atl. 385. .

(b) Although the court, under a prayer by defendant for an instruction referring to the evidence alone, may not examine the pleadings, yet it may look at the writ, which is no part of them, and say that no declaration, properly used under the form of action there disclosed, could have entitled the plaintiff to recover under the proof in the case.—*Richardson v. Milburn*, 11 Md. 340.

(c) By Act 1825, c. 117 (Code, art. 5, § 9), the Court of Appeals is not permitted to affirm or reverse the judgment of the lower court upon any point which is not shown by the record to have been there raised and decided. Therefore, a prayer to instruct the jury, upon the evidence set forth, "that the plaintiff is not, in the face of his said deed, entitled to recover for any damages done his mills by reason of the construction of the canal across said public road, and the destruction of said public road," involves no question upon the pleadings in the cause, nor whether the facts proved sustain the allegations in the declaration. It only presents the isolated question of the legal effect of the deed referred to, and whether, in consequence of said deed, the testimony given in the cause showed no cause of action.—*Leopard v. Chesapeake & O. Canal Co.*, 1 Gill 222.

### § 180. (Omitted from this title in the classification used herein.)

### (B) OBJECTIONS AND MOTIONS, AND RULINGS THEREON.

#### Cross-References.

Necessity of raising question in intermediate court in order to review on further appeal, see post, § 1082.

Requisites of record, see post, §§ 499, 500.

Waiver of objections by failure to urge on appeal, see post, § 1078.

Criminal prosecutions, see "Criminal Law," §§ 1030-1045.

In suits for divorce, see "Divorce," § 179.

### § 181. Necessity of objections in general.

(a) Judgment having been rendered more than 30 days (and so deemed enrolled), the court granted a rehearing, on which two rearguments were had, and no objection raised. *Held*, that such silence waived the objection, and precluded review in the Court of Appeals.—*Cherbonnier v. Goodwin*, 79 Md. 55, 28 Atl. 894; *Blandin v. Same*, *Ibid*; *Emory v. Same*, *Ibid*.

(b) Plaintiff made a written contract to sell defendant all the wood which he had purchased of another, growing on a tract whose boundaries were not definitely described. In an action on a note for the wood, it appeared that, before making the contract, plaintiff had pointed out a fence as one boundary; and no attempt was made to limit such evidence by instructions or otherwise. Between such fence and the true line there were 12 acres, the wood on which did not belong to plaintiff. Under Code, art. 5, § 9, providing that the Court of Appeals shall decide no question not raised below, *held*, that the evidence of plaintiff's representations must be taken to be in the case for all purposes, whether originally admissible or not, and that the contract was for the wood to the fence, and defendant could set up the partial failure of consideration.—*Sentman v. Gamble*, 69 Md. 293, 14 Atl. 673. (For opinion on first argument, see 69 Md. 312, 13 Atl. 58. For former appeal, see 68 Md. 71, 11 Atl. 584.)

(c) In equity appeals, Code, art. 5, § 36, provides that objections to the admissibility of evidence shall not be made for the first time in the appellate court. A defendant, who though duly summoned, has failed to

appear in the lower court, is in no better position than he would be if he had appeared, and had not objected to the testimony offered.—*Mondell v. Shafer*, 49 Md. 492.

(d) Inadmissible evidence, not objected to at the trial below, is in evidence in the case, and must be treated as such in the appellate court.—*Atwell v. Grant*, 11 Md. 101.

(e) Objections to evidence cannot be raised for the first time on appeal.—*Luckett v. White*, 10 G. & J. 480; *Long v. Long*, 9 Md. 348.

(f) Under act 1832, c. 302 (see Code, art. 5, § 36), providing that "all objection to the admissibility of evidence or the competency of witnesses shall be made in the court below, and no point relating to such admissibility or competency shall be noticed in the Court of Appeals unless raised by exception in the court below," it was held, that, where the Court of Appeals find evidence in the case to which no such objection has been taken, such evidence must be considered, and allowed its full force.—*Gibbs v. Gale*, 7 Md. 76.

(g) No objection being taken to the admissibility of a letter as evidence in the court below, it is too late to except to its legality as testimony in the Court of Appeals.—*Key v. Knott*, 9 G. & J. 342.

(h) The objection that evidence is inadmissible, because mere hearsay, cannot be made before the appellate court, if not taken by exception below.—*Key v. Knott*, 9 G. & J. 342.

(i) Act 1832, c. 307 (Code, art. 5, § 36), which provides that questions of the sufficiency of the averments in a bill or petition shall not first be raised in the appellate court, does not prohibit the raising of objections to the form of the proceeding.—*Boteler v. Brookes*, 7 G. & J. 143.

(j) Where evidence has been admitted to the jury in the court below without objection, it has the same effect as if admitted according to the strict rules of evidence.—*Farmers' Bank v. Duvall*, 7 G. & J. 78.

(k) An appeal entered prior to the year 1823 is not affected by act 1825, c. 117 (Code, art. 5, § 9), and it is the duty of the Court of Appeals to notice errors apparent

on the face of the record, or any legal objections to evidence set out in the record, although they were not brought into view of the court below.—*Mundell v. Hugh*, 2 G. & J. 193.

(l) Though illegal evidence is received in the court below without objection, it will be rejected in the appellate court.—*Handy v. State*, 7 H. & J. 42, 16 Am. Dec. 292. (But see Code, art. 5, § 9, and decisions supra this section.)

(m) In the Court of Appeals, an objection that a copy of a certificate of survey was admitted in evidence, though not under seal, comes too late, since, if it had been made in the lower court, it could have been easily obviated.—*Carroll v. Norwood*, 4 H. & McH. 287.

### § 182. Nature or form of remedy.

#### *Cross-References.*

Adhering to theory pursued below, see ante, § 171.

Necessity for specific objection, see post, § 231.

### § 183.—Objections in general.

### § 184.—Remedy at law or in equity.

(a) Act 1832, c. 307 (Code, art. 5, § 36), which provides that questions of the sufficiency of the averments in a bill or petition shall not first be raised in the appellate court, does not prohibit the raising of objections to the form of the proceeding.—*Boteler v. Brooks*, 7 G. & J. 143.

### § 185. Organization and jurisdiction of lower court.

#### *Cross-References.*

Equitable jurisdiction, see ante, § 184.

Necessity for exception, see post, § 248.

Necessity for specific objection, see post, § 231.

(a) Where, in a suit in equity, no objections to the jurisdiction of the court were raised in the trial court as required by Code, art. 5, §§ 36, 37, an appeal from orders entered before appellant became a party will be dismissed, as he should have first applied to the trial court to set aside the orders.—*Carrington v. Thomas C. Bashor Co.*, 121 Md. 71, 88 Atl. 52.

(b) In actions at law the question of the jurisdiction of the court may be raised for the first time on appeal or writ of error.—*United States Express Co. v. Hurlock*, 120 Md. 107, 87 Atl. 834.

(c) Code, art. 5, § 37, providing that no defendant in a suit in equity shall object on appeal to the jurisdiction of the court below unless the record shows that such objection was made in the lower court, is not satisfied by an objection to the jurisdiction made in argument in the lower court, but must be taken by exception filed.—*Melvin v. Aldridge*, 81 Md. 650, 32 Atl. 389.

(d) A judgment rendered without jurisdiction of the parties or subject-matter by the trial court is a void judgment, and objection to the jurisdiction may be made in the court below, or it may be made for the first time on appeal, for the reason that such judgment is a nullity.—*Fairfax Forest Min. & Mfg. Co. v. Chambers*, 75 Md. 604, 23 Atl. 1024.

(e) Joint insolvency proceedings against several persons, as partners, being unauthorized by statute, the want of jurisdiction, apparent on the record, will be noticed by the appellate court of its own motion, though the point was not raised in the trial court.—*Schiff v. Solomon*, 57 Md. 572.

(f) Where a bill avers that a bill of sale absolute in form was given as security for certain notes, and that, notwithstanding the fact that they had been paid, the mortgagee has seized and carried away the goods, with intent to sell them, and prays that the bill of sale be declared a mortgage, and be delivered up for cancellation, and that an account be stated between the parties, and for an injunction restraining the mortgagee from selling the goods, an objection in the reviewing court, made after a final decree in complainant's favor perpetuating the injunction, on the ground that no case entitling complainant to an injunction was made by the bill, is too late, if intended as an exception to the lower court's jurisdiction.—*Laeber v. Langhor*, 45 Md. 477.

(g) In a bill for the sale of lands for the payment of legacies, the objection that plaintiffs had no right of action against defendant remainderman, but were limited to a sale of the life estate, and therefore the court had no jurisdiction as to the remainderman, cannot be urged on appeal,

unless it appears by the record that such objection was made in the lower court.—*Ashton v. Ashton*, 35 Md. 496.

(h) Want of special jurisdiction may be raised for the first time in the appellate court.—*White v. Solomonsky*, 30 Md. 585.

(i) Under Code, art. 5, § 37, an objection to the jurisdiction of a court of equity cannot be raised on appeal for the first time.—*Gough v. Manning*, 26 Md. 347.

(j) Where a bill in equity omits to aver the existence of a fact which is made necessary by statute to the jurisdiction of the court over the subject-matter of the suit, such omission cannot be taken advantage of upon appeal, where no objection is made in the lower court.—*Stallings v. Stallings*, 22 Md. 41.

(k) By the express terms of act 1841, c. 163 (Code, art. 5, § 37), the appellant, without any appearance, or making any defense, in the circuit court, is not permitted to come into the appellate court and except to the jurisdiction of the circuit court as a court of equity—*Bratt v. Bratt*, 21 Md. 578.

(l) A bill in equity was filed by a legatee against an executor and the sureties upon his bond to recover a legacy, and, having been dismissed as to the sureties, the complainant appealed. *Held*, that, no objection to the jurisdiction appearing by the record to have been made in the court below, by Act 1841, c. 163 (Code, art. 5, § 37), the appellate court was precluded from considering that question.—*Knight v. Brawner*, 14 Md. 1.

(m) In equity cases the Court of Appeals are prohibited from allowing any objection to be urged to the jurisdiction of the court below, where no such objection was there taken.—*Farmers' & Mechanics' Bank v. Wayman*, 5 Gill 356; *O'Neill v. Cole*, 4 Md. 107; *Teackle v. Gibson*, 8 Md. 70.

(n) The appellate court cannot reverse a judgment for errors not passed upon in the county court; but, where it appears that the county court had no jurisdiction in the matter, the judgment must be reversed, notwithstanding the question was not raised in the court below.—*Boarman v. Patterson*, 1 Gill 372.

**§ 186. Venue.**

(a) A rule was entered, June 15th, that the defendant plead 15 days thereafter, and service was acknowledged, and the cause continued to the September term. The defendant, on October 14th, made a motion for a judgment of non pros. on the ground of nonresidence. *Held*, that the motion came too late.—*Yoe v. Gelston*, 37 Md. 233.

**§ 187. Parties.***Cross-References.*

Capacity or right to sue or defend, see ante, § 174.  
Necessity for specific objection, see post, § 231.  
Revivor, see post, § 189.

**§ 188. Process and notice.***Cross-References.*

Appointment of receiver, see post, § 190.  
Scope and effect of objections, see post, § 232.

**§ 189. Motions and other incidental and collateral proceedings.***Cross-References.*

Motion for transfer of cause, see post, § 199.  
Scope and effect of objections, see post, § 232.  
For injunction, see post, § 190.  
In attachment or garnishment proceedings, see post, § 190.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 190. Proceedings relating to provisional remedies.***Cross-Reference.*

Decisions reviewable, see ante, §§ 97-101.

(a) Objection to attachment proceedings on the ground that they do not, upon their face, show affirmatively that the provisions of the statute have been substantially complied with, may be taken by motion to quash, or in arrest of judgment, or for the first time on appeal.—*Coward v. Dillinger*, 56 Md. 59.

(b) Upon an appeal from a judgment of condemnation in attachment, the question of the regularity and sufficiency of the proceedings is open to inquiry, although no motion was made in the court below to set aside the judgment, or any motion to quash before the judgment was rendered.—*Mears v. Adreon*, 31 Md. 229.

**§ 191. Pleading.***Cross-References.*

Adhering to pleadings as construed below, see ante, § 171.  
Judgment rendered on reversal for defect in pleading not objected to below, see post, § 1177.  
Necessity for exception, see post, §§ 253-256.  
Necessity for motion presenting objection, see post, § 237.  
Necessity for rulings on demurrer or plea in abatement, see post, § 242.  
Necessity for specific objection, see post, § 231.  
Necessity for timely objection, see post, § 230.  
Requisites of record, see post, § 500.  
Scope and effect of objections, see post, § 232.  
Rules of construction on objections first raised in appellate court, see "Pleading," § 34.

**§ 192.— Defects in general.**

(a) Where neither the granted, rejected, or modified prayers, nor the written or oral instructions given by the court, referred to the pleadings, no question on the pleadings could arise on appeal, but the question whether the evidence established a case entitling a recovery in any form of action was open nevertheless.—*Rosenkovitz v. United Rys. & Electric Co. of Baltimore City*, 108 Md. 306, 70 Atl. 108.

(b) Where requests for instructions make no reference to the pleadings, no question on the pleadings can arise thereon on appeal.—*Fletcher v. Dixon*, 107 Md. 420, 68 Atl. 875.

(c) Where no question of pleading was raised in the court below, either upon the instructions refused or those given, none can be entertained in the Court of Appeals.—*Owings v. Jones*, 9 Md. 108.

(d) All the pleadings previous to that which is held bad must be considered to have been recognized as being in proper form.—*Burgess v. Lloyd*, 7 Md. 178.

(e) Where it does not appear from the record that any question was raised in the lower court as to the form or sufficiency of the pleadings, the appellate court is not at liberty to act upon such questions.—*Hardey v. Coe*, 5 Gill 189.

(f) Act 1832, c. 307 (Code, art. 5, § 36), which provides that questions of the suffi-



ciency of the averments in a bill or petition shall not first be raised in the appellate court, does not prohibit the raising of objections to the form of the proceeding.—*Boteler v. Brookes*, 7 G. & J. 143.

(g) An appeal entered prior to the year 1823 is not affected by act 1825, c. 117 (Code, art. 5, § 9), and it is the duty of the appellate court to notice errors apparent on the face of the record, or any legal objections to evidence set out in the record, although they were not brought into view of the court below.—*Mundell v. Hugh*, 2 G. & J. 193.

### § 193.—Objections to declaration, complaint, or petition.

#### *Cross-Reference.*

Variance, see post, § 197.

(a) A defendant whose answer was on file when an order appointing a receiver was made cannot object on appeal to the sufficiency of the bill or the jurisdiction of the court, unless these objections were made in the trial court as provided by Code, art. 5, §§ 36, 37, nor can one not a necessary party, who became a party after the order was entered, raise such objections on appeal, under article 5, § 27, without first applying to the trial court to rescind the order, unless the case be one where the court could under no circumstances have jurisdiction.—*Carrington v. Thomas C. Basshor Co.*, 121 Md. 71, 88 Atl. 52.

(b) The sufficiency of the cause of action filed in attachment may not, in view of Code, art. 9, § 28, permitting amendment of papers in attachment to promote justice, be objected to for the first time on appeal.—*De Bearn v. De Bearn*, 119 Md. 418, 86 Atl. 1049.

(c) Where a complaint and accompanying documents are lost, and in the subsequent proceedings in the cause a petition and exhibit of the complainants are received by the court in lieu of the lost papers, and the respondents answer the same, without making any objection to their sufficiency, they are precluded under Code, art. 5, § 36, from making such objection in the Court of Appeals.—*McKaig v. Hebb*, 42 Md. 227.

(d) Errors or defects in a declaration,

which do not appear by the record to have been raised in the lower court by objection, cannot under the provisions of act 1825, c. 117 (Code, art. 5, § 9), be permitted to be urged or insisted upon in the trial of the appeal.—*Carter v. Cross*, 7 Gill 43.

(e) If plaintiff under a peremptory rule to file his declaration by a certain time fails to do so, but the declaration when filed is received, and a rule laid on defendant to plead to it, it is then too late to complain, defendant having waived his right to take advantage of the laches of the plaintiff.—*Benson v. Davis' Adm'r*, 6 H. & J. 272.

### § 194.—Objections to plea or answer, or to subsequent pleadings.

#### *Cross-References.*

Variance, see post, § 197.

Review as dependent on presentation of question in lower court, see ante, § 173.

(a) Where an answer to a bill sets up the want of necessary parties as a defense, an objection to the answer on the ground that it fails to specify such necessary parties cannot be raised for the first time on appeal.—*Mishler v. Finch*, 104 Md. 183, 64 Atl. 945.

(aa) Grounds not set out in the demurrer filed cannot be set up on appeal.—*Williams v. Harlan*, 88 Md. 1, 41 Atl. 51, 71 Am. St. Rep. 394.

(b) A judgment will not be set aside because no replication was filed to a plea of tender; the record stating that issue was joined, and the trial being had on the pleadings as they stood.—*Soper v. Jones*, 56 Md. 503.

(c) On appeal from an order granting an injunction, the order was affirmed, and cause remanded and reinstated, and a day fixed for the hearing. Both parties then proceeded to take evidence, after due notice to each other, and new complainants and defendants were made parties. Other proceedings were also taken. On the day fixed for the hearing, two years and a half from the filing of the answer, exceptions to the answer were taken for the first time. *Held*, that they must be overruled.—*Belt v. Blackburn*, 28 Md. 227.

(d) Where plaintiff's *ne recipiatur* to a demurrer has been overruled, without ex-

ception on his part, and he has joined in demurrer, he cannot be heard to say that the demurrer was not seasonably interposed.—*Kent v. Holliday*, 17 Md. 387.

(e) Not objecting to the form of a demurrer or joining issue on it, is a waiver of all objections on the ground of nonconformity to the statutory requirement of specific statements of the grounds of demurrer.—*Shoop v. Powles*, 13 Md. 304.

(f) If to a plea of the statute of limitations plaintiff files a replication, and defendant joins issue, all irregularity as to the time of filing the plea is waived.—*Stockett v. Sasscer*, 8 Md. 374.

(g) When plaintiff takes issue in fact on an allegation which does not constitute a legal bar to his action, he is not entitled to ask the court to rule out testimony tending to prove such allegation.—*Mitchell v. Williamson*, 9 Gill 71.

(h) In an action for dower in the realty called "Part Brambly," the plea,—after averring that the father of the husband of complainant died seised of such realty and that a partition of it was had whereby it was divided into four parts; that lot No. 1 of such realty was elected to be taken by the husband of complainant, and that a bill was filed by the assignee of the bonds taken for the payment of the proportions of the other heir for a sale of such realty,—alleged that such realty was sold free from all claims of all parties to the suit. *Held*, that if such plea was ambiguous, advantage ought to have been taken of it by a special demurrer.—*Gardiner v. Miles*, 5 Gill 94.

### § 195.— Amendments and supplemental pleadings.

#### *Cross-References.*

Necessity of taking exceptions, see post, § 255.

Requisites of record, see post, § 499.

### § 196.— Motions.

#### *Cross-References.*

Necessity of exception, see post, § 256.

Necessity for motion presenting objection, see post, § 236.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 197.— Variance.

(a) Under Code, art. 5, § 36, providing that on appeal in equity no objection to the admissibility of evidence or the sufficiency of the bill shall be raised unless the record shows that such objection was made by exceptions in the trial court, the Court of Appeals will decree according to the evidence in the record, whether covered by the averments of the bill or not, where no objection was taken to the bill, or exception to the testimony.—*Engler v. Garrett*, 100 Md. 387, 59 Atl. 648.

(b) On appeal in a suit to enjoin a subscription to a railroad by a county, the appellate court will consider whether there was the required publication of the law authorizing the subscription, though the bill does not assign defective publication as a ground for impeaching the subscription, if proof of the defective publication has been admitted without objection to the sufficiency of the allegations of the bill.—*Baltimore & D. P. R. Co. v. Pumphrey*, 74 Md. 86, 21 Atl. 559.

(c) Objection to evidence, on the ground of variance, should be taken in the court below, either directly, when such evidence is offered, or by a prayer properly framed for that purpose.—*Straus v. Young*, 36 Md. 246.

(d) Variance between pleading and proof must be taken advantage of at the trial, or it is waived.—*Straus v. Young*, 36 Md. 246.

(e) It cannot be objected to the admission in evidence of a sealed lease that the declaration averred that defendant had covenanted in such lease, but did not state that it was under seal. The defect, if any, was waived by pleading over.—*Cooke v. England*, 27 Md. 14, 92 Am. Dec. 618.

(f) Questions of variance between the allegation and proof cannot be raised in the Court of Appeals, unless they were made in the court below.—*Pennsylvania, D. & M. Steam Nav. Co. v. Dandridge*, 8 G. & J. 248, 29 Am. Dec. 543.

### § 198. Reference of cause or question.

#### *Cross-Reference.*

Hearing, findings, and report, see post, § 220.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

### § 199. Proceedings preliminary to trial or hearing.

#### *Cross-Reference.*

Necessity for motion presenting objection, see post, § 236.

### § 200. Qualifications and selection, impaneling and oath of jurors.

#### *Cross-References.*

Custody and conduct of jury, see post, § 217.

Necessity for timely objection, see post, § 230.

Scope and effect of objection, see post, § 232.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 201. Mode and conduct of trial or hearing.

#### *Cross-Reference.*

Necessity of exception, see post, § 259.

(a) An appeal entered prior to the year 1823 is not affected by act 1825, c. 117 (Code, art. 5, § 9), and it is the duty of the appellate court to notice errors apparent on the face of the record, or any legal objections to evidence set out in the record, although they were not brought into view of the court below.—Mundell v. Hugh, 2 G. & J. 198.

### § 202. Evidence and witnesses.

#### *Cross-References.*

Adding to or changing grounds of objection, see post, § 232.

Necessity of exception, see post, § 260.

Necessity for motion presenting objection, see post, § 237.

Necessity for ruling on objection, see post, § 242.

Necessity for specific objection, see post, § 231.

Necessity for timely objection, see post, § 230.

On trial to court, see post, § 219.

Requisites of record, see post, §§ 499, 500.

Scope and effect of objection, see post, § 232.

### § 203.—In general.

(a) Where a party testified in his own behalf, and no exception was made to his competency before he was examined, the question cannot be raised on appeal.—Baker v. Safe-Deposit and Trust Co., 93 Md. 368, 48 Atl. 920; rehearing denied, 93 Md. 368, 49 Atl. 623.

(b) In equity appeals, Code, art. 5, § 36 provides that objections to the admissibility of evidence shall not be made for the first time in the appellate court. A defendant, who, though duly summoned, has failed to appear in the lower court, is in no better position than he would be if he had appeared and had not objected to the testimony offered.—Mondell v. Shafer, 49 Md. 492.

(c) When, by the agreement of the counsel in a cause, depositions taken before one who was not an authorized commissioner are read in evidence upon the trial, subject to any exception which might be taken to the competency of the witness, the question of the competency of such witness may be considered in the appellate court, even though no formal objection was taken in the court below.—Billingslea v. Ward, 38 Md. 48.

(cc) The party against whom an incompetent witness is called to testify must take his objection as soon as the ground of incompetence is discovered and he has an opportunity of doing it; otherwise he will be considered as having waived the objection.—Groshon v. Thomas, 20 Md. 234.

(d) Where objections were taken to certain parts of a deposition, which were overruled by the court below, the court above cannot consider any objections to other parts of the deposition, not objected to at the trial; and it is not the duty of the court to point out objections to the admissibility of proof.—Bullitt v. Musgrave, 3 Gill 31.

(e) The objection that a commissioner to take evidence under a commission from chancery has not taken the oath annexed to the commission is excluded from the consideration of the appellate court, unless it has been made the ground of exception in the court below, before the passage of the decree.—Fitzhugh v. McPherson, 9 G. & J. 51.

### § 204.—Admission of evidence.

(a) Where the trial court was not called upon to take judicial notice that the date of the note sued upon fell upon Sunday, and hence did not notice that fact, the appellate court should not consider it in re-

viewing the trial court's ruling admitting the note.—*Line v. Line*, 119 Md. 403, 86 Atl. 1032.

(b) Evidence of statements made by testatrix to show what her intentions were in reference to a legacy are inadmissible in construing the will, and, if admitted without objection, the appellate court is not required to consider such evidence under a statute providing that no objections to the admissibility of evidence shall be made on appeal unless objected to in the trial court, Code, art. 93, §§ 323, 324, requiring a will and the revocation thereof or of any part thereof to be in writing.—*Lowe v. Whitridge*, 105 Md. 183, 65 Atl. 926.

(c) Plaintiff made a written contract to sell defendant all the wood which he had purchased of another, growing on a tract whose boundaries were not definitely described. In an action on a note for the wood, it appeared that, before making the contract, plaintiff had pointed out a fence as one boundary; and no attempt was made to limit such evidence by instructions or otherwise. Between such fence and the true line there were 12 acres, the wood on which did not belong to plaintiff. Under Code, art. 5, § 9, providing that the Court of Appeals shall decide no question not raised below, *held*, that the evidence of plaintiff's representations must be taken to be in the case for all purposes, whether originally admissible or not, and that the contract was for the wood to the fence, and defendant could set up the partial failure of consideration.—*Sentman v. Gamble*, 69 Md. 293, 14 Atl. 673. For opinion on first argument see 69 Md. 312, 13 Atl. 58. For former appeal see 68 Md. 71, 11 Atl. 584.

(d) Inadmissible evidence, not objected to at the trial below, is in evidence in the case, and must be treated as such in the appellate court.—*Atwell v. Grant*, 11 Md. 101.

(e) Objections to evidence cannot be raised for the first time on appeal.—*Lockett v. White*, 10 G. & J. 480; *Long v. Long*, 9 Md. 348.

(f) Under act 1832, c. 302 (Code, art. 5, § 36), providing that "all objections to the

admissibility of evidence or the competency of witnesses shall be made in the court below, and no point relating to such admissibility or competency shall be noticed in the Court of Appeals, unless raised by exception in the court below," it was *held* that, where the Court of Appeals find evidence in the case to which no such objection has been taken, such evidence must be considered, and allowed its full force.—*Gibbs v. Gale*, 7 Md. 76.

(g) No objection being taken to the admissibility of a letter as evidence in the court below, it is too late to except to its legality as testimony in the Court of Appeals.—*Key v. Knott*, 9 G. & J. 342.

(h) The objection that evidence is inadmissible, because mere hearsay, cannot be made before the appellate court, if not taken by exception below.—*Key v. Knott*, 9 G. & J. 342.

(i) Where evidence has been admitted to the jury in the court below without objection, it has the same effect as if admitted according to the strict rules of evidence.—*Farmers' Bank v. Duvall*, 7 G. & J. 78.

(j) An appeal entered prior to the year 1823 is not affected by act 1825, c. 117 (Code, art. 5, § 9), and it is the duty of the appellate court to notice errors apparent on the face of the record, or any legal objections to evidence set out in the record, although they were not brought into view of the court below.—*Mundell v. Hugh*, 2 G. & J. 193.

(k) Though illegal evidence is received in the court below without exception, it will be rejected in the appellate court.—*Handy v. State*, 7 H. & J. 42, 16 Am. Dec. 292. (But see Code, art. 5, § 9, and cases cited *supra* this section.)

(l) In the Court of Appeals, an objection that a copy of a certificate of survey was admitted in evidence, though not under seal, comes too late, since, if it had been made in the lower court, it could have been easily obviated.—*Carroll v. Norwood*, 4 H. & McH. 287.

#### § 205.—Exclusion of evidence.

##### *Cross-Reference.*

Necessity for exception, see *post*, § 260.

(a) The fact that plaintiff failed to formally state what answer a witness was expected to make to an excluded question does not preclude him from obtaining a review of the ruling excluding the question, where it was obvious what the answer of the witness was expected to be.—*Bauernschmidt v. Maryland Trust Co.*, 89 Md. 507, 43 Atl. 790.

**§ 206.—Reception of evidence and examination of witnesses.**

*Cross-References.*

Necessity for exception, see post, § 260.  
Experts, see ante, § 204.

(a) Error, in a passenger's action against a railroad company for being ejected, in permitting a witness to testify, after stating that he did not know whether he could judge as to plaintiff's condition, that in his judgment plaintiff appeared to be under the influence of liquor, was not reversible, where the question was answered before objected to and no motion was made to strike the answer.—*Maryland & P. R. Co. v. Tucker*, 115 Md. 43, 80 Atl. 688.

(b) An objection that a question was leading cannot be raised for the first time on appeal.—*Iron Clad Mfg. Co. v. Thomas B. Stanfield & Son*, 112 Md. 360, 76 Atl. 854.

(c) If questions are deemed objectionable as leading, objection thereto should be made at the time they are asked of the witness.—*Buck v. Brady*, 110 Md. 568, 73 Atl. 277.

**§ 207. Arguments and conduct of counsel.**

*Cross-References.*

Necessity for exception, see post, § 261.  
Necessity for motion presenting objection, see post, § 237.  
Necessity for specific objection, see post, § 231.  
Necessity for timely objection, see post, § 230.  
Requisites of record, see post, § 499.  
Scope and effect of objection, see post, § 232.

(a) Where the record does not show an exception to the ruling of the court allowing counsel to argue upon certain evidence, the judgment will not be reversed upon that account.—*Brinkley v. Platt*, 40 Md. 529.

**§ 208. Sufficiency of evidence.**

*Cross-References.*

Necessity for exception, see post, § 268.

Necessity for specific objection, see post, § 231.

**§ 209.—In general.**

**§ 210.—Taking case or question from jury in general.**

*Cross-Reference.*

Necessity for motion, see post, § 237.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 211.—Dismissal or nonsuit.**

*Cross-References.*

See post, § 212.  
Before trial, see ante, § 189.  
Necessity for motion, see post, § 237.  
Necessity for motion to set aside, see post, § 240.

**§ 212.—Direction of verdict.**

*Cross-Reference.*

Necessity for motion, see post, § 237.

(a) Where a prayer for the direction of a verdict under several papers does not direct the attention of the court to the particular circumstances supposed to require such a verdict, its rejection is not subject to review, under Code, art. 5, § 9, declaring that the Court of Appeals shall not decide a point which does not clearly appear to have been decided below.—*Burnett v. Bealmear*, 79 Md. 36, 28 Atl. 898.

**§ 213.—Submission of case or question to jury.**

*Cross-References.*

Necessity for exception and request for submission of issues, see post, § 262.  
Necessity for motion, see post, § 237.  
Necessity for requesting submission in addition to exception to ruling taking case or question from jury, see post, § 262.

(a) In an action on a contract claimed by plaintiff to be evidenced wholly by certain writings, and in which plaintiff made no request that the question of the terms of the contract should be left to the jury on the theory that it was not entirely in writing, the failure of the court so to do cannot be considered on plaintiff's appeal.—*Joseph Joseph Bros. Co. v. Schonthal Iron & Steel Co.*, 99 Md. 382, 58 Atl. 205.

**§ 214. Instructions.**

*Cross-References.*

Instructions given without objection as law of the case, see post, § 853.  
Necessity for exception, see post, § 263.  
Necessity for specific objection, see post, § 231.

Necessity for submitting propositions of law or giving instructions on trial by court, see post, § 846.

Necessity for timely objection, see post, § 230.

Requisites of record, see post, § 499.

Scope and effect of objection, see post, § 232.

### § 215.—Objections in general.

(a) Under Code, art. 5, § 9, the error in an instruction submitting questions of law to the jury cannot be corrected on appeal, where no objection appears from the record to have been made to the instruction on that ground.—*Cushwa v. Burgess & Commissioners of Williamsport*, 117 Md. 306, 83 Atl. 389.

(b) By the express provisions of Code, art. 5, § 9, no instruction given is deemed defective on appeal, because of any assumption of fact, or because of the insufficiency of the evidence to sustain it, unless the record shows that an objection for such defect was taken at the trial.—*Mylander v. Beimschla*, 102 Md. 689, 62 Atl. 1038, 5 L. R. A. (N. S.) 316.

(c) Objections to instructions may not be raised on appeal for the first time.—*Jacob Tome Inst. v. Crothers*, 87 Md. 569, 40 Atl. 261; *Washington Co. Water Co. v. Garver*, 91 Md. 398, 46 Atl. 979.

(d) Under Code, art. 5, § 9, requiring questions as to the sufficiency of evidence to support instructions given to be raised in the court below, the appellate court will disregard such questions when raised for the first time on appeal.—*Commissioners of Worcester County v. Ryckman*, 91 Md. 36, 46 Atl. 317.

(e) The rule that an objection to a prayer on the ground that it is not supported by the evidence cannot be raised on appeal for the first time applies only to granted, and not to rejected, prayers.—*Register v. Medcalf*, 71 Md. 528, 18 Atl. 966.

(f) If an instruction is given without any evidence to support it, that objection, to be available in the appellate court, must have been made below.—*Stoner v. Devilbiss*, 70 Md. 144, 16 Atl. 440.

(g) Where, in the court below, no objection has been made to the assumption of certain facts by the plaintiff in his prayer

for instructions, no such objection can be raised before the higher court on appeal.—*Rasin v. Conley*, 58 Md. 59; *Padgett v. Sweeting*, 65 Md. 404, 4 Atl. 887.

(gg) Defendant offered five prayers for instructions, all of which, except the fifth, were rejected. The fifth was granted and two instructions were given by the court. Defendant then withdrew the second, third and fourth prayers, saying, by its solicitor, that the instructions of the court covered the same points, and were satisfactory; but defendant reserved an exception to the rejection of its first prayer, which denied the right of plaintiff to recover upon the written paper declared on as the cause of action. No exception was taken by defendant to the two instructions given by the court, which directed the jury that plaintiff was entitled to recover upon the finding of certain facts therein stated. *Held*, on appeal by defendant, that the statement of defendant's solicitor was not to be understood as importing an acquiescence in the instruction of the court as constituting the whole law of the case, but only as covering some points presented by the second, third, and fourth prayers, and that it must be understood that the solicitor intended to accept the instructions granted, in lieu of those prayers which were withdrawn, and not to waive or abandon the position asserted in the first prayer, especially when, in terms, an exception was reserved to the rejection of that prayer.—*Delaware State Fire & Marine Ins. Co. v. Shaw*, 54 Md. 546.

(h) Under Acts 1862, c. 154 (Code, art. 5, § 9), the omission of an essential fact from a prayer for instructions cannot be taken advantage of on appeal, where no objection on this ground appears to have been taken at the trial.—*Franklin v. Clafin*, 49 Md. 24.

(i) An objection that the prayer assumed a fact of which there was no evidence will not be considered, where no objection thereto was made at the time of trial.—*Philadelphia, W. & B. R. Co. v. Larkin*, 47 Md. 155, 28 Am. Rep. 442.

(j) An objection to an instruction on the ground that there was no evidence of the facts therein stated, not having been made below, cannot, under the rules, be considered

in the Court of Appeals.—*Annapolis & E. R. Co. v. Gantt*, 39 Md. 115.

(k) No objection can be made in the Court of Appeals to an instruction on the ground that it submitted a question of law to the jury, or that it assumed facts, unless it appear from the record that an objection for such defect was taken at the trial below.—*Stansbury v. Fogle*, 37 Md. 369.

(l) An objection that there is no proof to support a prayer must be taken in the court below.—*Straus v. Young*, 36 Md. 246.

(m) An objection made to an instruction for the first time in the appellate court comes too late.—*Worthington v. Tormey*, 34 Md. 192.

(n) Act 1862, c. 154 (Code, art. 5, § 9), prevents the Court of Appeals from reversing a judgment by reason of the assumption of a fact on the part of the court below unless the objection is made at the trial below.—*Dunham v. Clogg*, 30 Md. 292.

(o) Under act 1862, c. 154 (Code, art. 5, § 9), an objection to a charge, that it assumed a fact, cannot be raised for the first time on appeal.—*Everett v. State*, 28 Md. 190.

(p) Act 1862, c. 154 (Code, art. 5, § 9), applies as well to an instruction which assumes several facts, as to one in which one fact is assumed; and if there be proof to sustain the facts competent to go to the jury, and the court in its instruction assumes them, instead of submitting them to the jury, the objection must be taken at the trial, otherwise it cannot be insisted on in the appellate court as cause for reversal.—*Morrison v. Hammond*, 27 Md. 604.

(q) The refusal to give, or the giving, instructions prayed for, referring only to the evidence, will not be considered with reference to the pleadings, the attention of the court below not having been called to them.—*Giles v. Fauntleroy*, 13 Md. 126.

(r) Where, in the appellate court, a new objection is raised to an instruction, to which the attention of the lower court does not appear to have been called, and it is a fatal objection to the opinion given by the court below, the judgment will be reversed.—*Bohn v. Headley*, 7 H. & J. 257.

## § 216.—Requests and failure to give instructions.

### *Cross-References.*

Necessity for exception, see post, § 263.

Necessity in order to raise particular issues, see ante, § 179.

(a) An objection that the charge was insufficient will not be considered in the absence of a request for further or more complete instructions.—*Packham v. Glendmeyer*, 103 Md. 416, 63 Atl. 1048.

(b) Code, art. 5, § 9, providing that no instruction given is deemed defective on appeal because of any assumption of fact or because of the insufficiency of the evidence to sustain it, unless the record shows that an objection for such defect was taken at the trial does not apply to a rejected instruction.—*Mylander v. Beimschla*, 102 Md. 689, 62 Atl. 1038, 5 L. R. A. (N. S.) 316.

(c) In an action on a contract claimed by plaintiff to be evidenced wholly by certain writings, and in which plaintiff made no request that the question of the terms of the contract should be left to the jury on the theory that it was not entirely in writing, the failure of the court so to do may not be asserted as error upon plaintiff's appeal.—*Joseph Joseph Bros. Co. v. Schonthal Iron & Steel Co.*, 99 Md. 382, 58 Atl. 205.

(d) Questions as to the sufficiency of evidence to support instructions which are rejected are not affected by the rule established by Code, art. 5, § 9, requiring questions as to the sufficiency of evidence to support instructions "actually granted" to be raised in the lower court.—*Commissioners of Worcester County v. Ryckman*, 91 Md. 36, 46 Atl. 317.

(e) Error cannot be predicated on the granting of plaintiff's requested instruction, in an action for death of deceased, that if he had been drinking and was slightly intoxicated, but was not drunk, want of ordinary care and prudence could not be inferred from such use of intoxicating drink and such intoxication; though defendant, if he had requested it, would have had the right to have submitted the circumstances of decedent's drinking and the degree of his intoxication, which the jury could have considered on the question of due care to be

exercised by him.—*Baltimore & P. R. Co. v. State*, 81 Md. 371, 32 Atl. 201.

(f) Where a party asks an instruction which is partly good and partly bad, it is proper to refuse it altogether.—*Doyle v. Baltimore County Com'rs*, 12 G. & J. 484; *Stewart v. Spedden*, 5 Md. 438; *Preston v. Leighton*, 6 Md. 88; *Birney v. New York, etc., Co.*, 18 Md. 341, 81 Am. Dec. 607; *Blumhardt v. Rohr*, 70 Md. 328, 17 Atl. 266.

(g) Where, in an action for personal injuries, the court is not requested to charge as to contributory negligence at the trial, its failure to do so is not error.—*Baltimore & P. R. Co. v. Bahrs*, 28 Md. 647.

(h) If evidence is admitted which is admissible for one purpose but not for another, a party desiring that it should be excluded from the consideration of the jury, so far as the latter purpose is concerned, should ask an instruction to that effect.—*Pegg v. Warford*, 7 Md. 582.

#### § 217. Custody and conduct of jury.

##### *Cross-Reference.*

Qualifications and selection, impanelling and oath, see ante, § 200.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 218. Verdict and findings by jury.

##### *Cross-References.*

Amount of recovery or extent of relief, see post, § 221.

Necessity for exception, see post, § 264.

Necessity for motion presenting objection, see post, § 287.

Necessity for specific objection, see post, § 281.

Necessity for timely objection, see post, § 230.

Scope and effect of objection, see post, § 282.

(a) An exception to the record evidence offered in reply to a plea of nul tiel record need not be formally signed before judgment rendered on the plea, nor need any prayer be submitted on the subject, in order to secure a review of the finding on that issue on appeal.—*State v. Jenkins*, 70 Md. 472, 17 Atl. 392.

(b) Under a declaration against two, charging a joint liability, one defendant, confessing judgment for the whole claim, cannot, since Acts 1825, c. 117 (Code, art. 5,

§ 9), raise in the Court of Appeals the objection that there should have been a joint verdict and judgment, or none.—*Barker v. Ayers*, 5 Md. 202.

#### § 219. Trial, decision, and findings by Court.

##### *Cross-References.*

Necessity for exception, see post, § 265.

Necessity for finding facts on trial by court, see post, § 846.

Necessity for motion presenting objection, see post, § 287.

Necessity for specific objection, see post, § 281.

Objections concerning conditions as to costs or payment thereof, see post, § 226.

Questions presented for review in absence of declarations of law, see post, § 846.

(a) An exception to the record evidence offered in reply to a plea of nul tiel record need not be formally signed before judgment rendered on the plea, nor need any prayer be submitted on the subject, in order to secure a review of the finding on that issue on appeal.—*State v. Jenkins*, 70 Md. 472, 17 Atl. 392.

(b) Under a declaration against two, charging a joint liability, one defendant, confessing judgment for the whole claim, cannot, since Acts 1825, c. 117 (Code, art. 5, § 9), raise in the Court of Appeals the objection that there should have been a joint verdict and judgment, or none.—*Barker v. Ayers*, 5 Md. 202.

#### § 220. Hearing, findings, and report by referee, commissioner, or auditor.

##### *Cross-References.*

Necessity for exception, see post, § 266.

Necessity for specific objection, see post, § 281.

Reference in general, see ante, § 198.

Requisites of record, see post, § 499.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 221. Amount of recovery or extent of relief.

##### *Cross-References.*

Necessity for exception, see post, § 269.

Necessity for specific objection, see post, § 281.

Necessity for timely objection, see post, § 230.

Scope and effect of objection, see post, § 282.

Variance as to damages, see ante, § 197.



(a) When the court fails to submit the issue of sufficiency of assets in a suit against an administrator, in which such question is raised by the pleadings and evidence, the failure to move in arrest of judgment prevents the consideration thereof on appeal.—*Gill v. Staylor*, 93 Md. 453, 49 Atl. 650.

(b) In the absence of objection in the trial court, in a suit for damages, as to the legal insufficiency of the evidence showing a pecuniary loss to the defendant, the question that the damages are excessive will not be considered on appeal.—*Baltimore & O. R. Co. v. State*, 60 Md. 449.

(c) That the judgment, though in accordance with the verdict, is erroneous, in that it gives damages where such could not legally be given, cannot be urged on appeal where no such question was raised in the lower court, and no motion in arrest of judgment was made.—*Cushwa v. Cushwa*, 5 Md. 44.

(d) Though act 1825, c. 117 (Code, art. 5, § 9), does not apply to motions in arrest of judgment, such motion must be made before the Court of Appeals will go behind the judgment.—*Morgan v. Briscoe*, 4 Md. 271.

(e) By Acts 1832, c. 302 (Code, art. 5, § 36), the Court of Appeals is prohibited from reversing or affirming any decree of a court of equity on the ground that the complainant has not shown himself entitled, by proper averments in his bill, to the relief which has been granted, unless such defect was presented by an exception to the consideration of the court below; but, when neither the pleadings nor proofs show that the complainant is entitled to the relief extended to him, the appellate court may reverse the decree.—*Evans v. Iglehart*, 6 G. & J. 171.

## § 222. Motion in arrest or for new trial or rehearing.

### *Cross-Reference.*

Necessity for exception, see post, § 270.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 223. Judgment.

### *Cross-References.*

Necessity for exception, see post, § 267.

Necessity for motion presenting objection, see post, § 238.

Necessity for specific objection, see post, § 231.

(a) An objection that the judgment was erroneously entered, in that interest was allowed from the date of the verdict, instead of from the date of the judgment, cannot be reviewed, when first made on appeal.—*New York, P. & N. R. Co. v. Waldron*, 116 Md. 441, 82 Atl. 709. (For change in law as to allowance of interest on verdict, see Code [Vol. 3], art. 26, § 16.)

(b) An objection that judgment was improperly refused, no reply having been filed, must be taken in the court below.—*Castleberg v. Wheeler*, 68 Md. 266, 12 Atl. 3.

(c) The clerk entered a conditional judgment, when the law only authorized an absolute judgment against the defendant. The plaintiff did not move to correct the error, and upon a subsequent appeal it was held that the judgment must stand as entered.—*Walters v. Munroe*, 17 Md. 501.

## § 224. Vacation or modification of judgment.

### *Cross-References.*

Necessity for exception, see post, § 270.

Necessity for motion, see post, § 238.

## § 225. Execution and enforcement of judgment.

### *Cross-References.*

Necessity for motion presenting objection, see post, § 240.

Necessity for specific objections, see post, § 231.

## § 226. Costs.

### *Cross-References.*

Necessity for exception, see post, § 270.

Necessity for motion presenting objection, see post, § 239.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 227. Proceedings for review.

### *Cross-References.*

Necessity for exception, see post, § 270.

Necessity for motion presenting objection, see post, § 240.

(a) Upon appeal from the judgment of a court of record proceeding according to the course of the common law, no motion in arrest or to strike out the judgment having been made, and no exception taken, the ap-

pellate court cannot reverse the judgment unless it affirmatively appears on the face of the record that the court had no jurisdiction over the cause or the parties, or that the judgment is invalid as not being authorized upon the verdict.—*Horner v. O'Laughlin*, 29 Md. 465.

(b) No matter what the character of the error in the judgment is, if no motion is made in the lower court, or its attention in any manner called to the subject, the judgment will not be reversed.—*Schleigh v. Hagerstown Bank*, 4 Gill 312.

### § 228. Objections to appeal to intermediate court.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 229. (Omitted from this title in the classification used herein.)

### § 230. Necessity of timely objection. *Cross-Reference.*

Necessity of timely exception, see post, § 272.

(a) An objection to a question as leading, not made when it was propounded, and before it was answered, comes too late; so that the allowance of the question is not reversible error on that ground.—*Rosenkovitz v. United Rys. & Electric Co. of Baltimore City*, 108 Md. 306, 70 Atl. 108.

(b) Objections to the admissibility of evidence cannot be raised for the first time in the form of a request for instructions to the jury.—*Lamb v. Taylor*, 67 Md. 85, 8 Atl. 760.

(c) A letter, without being submitted to the inspection of plaintiff's counsel, was offered in evidence, and partially read by defendant's counsel to the jury, without objection from plaintiff, who then objected to the reading of the balance. *Held*, that the objection having been interposed in good faith and with reasonable diligence, was made in due time, and the evidence, not being legally admissible, should have been excluded.—*Marsh v. Hand*, 35 Md. 123.

(d) After defendant has obtained the rejection of a note when offered in evidence, and has permitted a witness to state orally

the identical contract contained in the note, he is not entitled to the exclusion of such oral evidence, because he elicits on cross-examination the fact that the contract was a written one.—*Myers v. Smith*, 27 Md. 48.

(e) In an action on an award, an agreement for submission to arbitration was offered in evidence as a subsisting obligation between the parties, without exception; and the defendants, a corporation, proved by a witness that the parties joined in the request that he should write the award determined on by the arbitrators, and they also offered a series of prayers, assuming as a matter of fact the agreement to be an existing contract between the parties. *Held*, that the objection, subsequently made, that the authority of the president of the company to sign the agreement was not submitted as a distinct fact to be found by the jury, came too late.—*Maryland & D. R. Co. v. Porter*, 19 Md. 458.

(f) Parol evidence having been given of the contents, date, etc., of a draft, without objection, it was too late to object, because the draft itself, which was in the hands of the party in court, was the best evidence.—*Shanks v. Dent*, 8 Gill 120.

(g) It is too late to raise a purely legal objection, apparent on the face of the proof, after asking an instruction on the effect of the evidence or after the argument has commenced.—*Dent v. Hancock*, 5 Gill 120.

(h) It is too late to raise a purely legal objection, apparent on the face of the proof, after cross-examining the witness in relation thereto.—*Dent v. Hancock*, 5 Gill 120.

(i) It is the duty of counsel, if aware of objection to the admissibility of evidence, to object to it at the time it is offered; or, if not then informed of the objection to raise it within a reasonable time after he is so informed.—*Dent v. Hancock*, 5 Gill 120.

(j) After a cause had been committed to the jury, and partly argued before them, on both sides, an irregularity was discovered in relation to the interrogatories in a foreign deposition which had been read to the jury, there having been an omission to file such interrogatories, and serve due notice thereof. *Held*, that it was then too late to move to strike out the evidence of such

witnesses.—*Stockton v. Frey*, 4 Gill 406, 45 Am. Dec. 138.

(k) If a party permits proof to be taken in a cause without an oath, after it has been acted upon and made the basis of a judgment, he cannot object to its admissibility.—*Nesbit v. Dallam*, 7 G. & J. 494, 28 Am. Dec. 286.

### § 231. Necessity of specific objection.

(a) Where an exception does not show what testimony was objected to, or what questions the court passed upon, it will not be considered on appeal.—*Cumberland Glass Mfg. Co. v. De Witt*, 120 Md. 381, 87 Atl. 927.

(b) Where a physician, admittedly a medical expert, was asked as a witness if he was able to say as a physician whether an injury was caused by an electric shock or by other means, and, upon objection being overruled, did not answer the question as to his ability to answer as a physician, but gave his opinion, the admission of his answer could be reviewed on appeal, though the objection to the question was not made specially on the ground that he was not qualified as an expert to answer.—*United Rys. & Electric Co. v. Corbin*, 109 Md. 442, 72 Atl. 606.

(c) By the express provisions of rule 4 of the Court of Appeals (Code, art. 5, § 9) the giving of instructions will not be reviewed as to sufficiency of evidence to support the hypothesis, assumption of facts, or submitting a question of law to the jury, where no special exceptions presenting such questions were taken.—*B. F. Sturtevant Co. v. Cumberland Dugan & Co.*, 106 Md. 587, 68 Atl. 351.

(d) The refusal of an instruction because there was no evidence to support it will not be reviewed by the Court of Appeals, where no special exception presenting the question was taken.—*B. F. Sturtevant Co. v. Cumberland Dugan & Co.*, 106 Md. 587, 68 Atl. 351.

(e) Where an attorney at law appeared at a sale being made by a sheriff under an execution, and gave him notice of a claim of exemption, a judgment against the sheriff for failure to reserve the exemption will

not be reversed on the ground that the record did not show that the attorney had any authority to represent the execution debtor, on a general prayer that there was no evidence legally sufficient to entitle plaintiff to recover, and without any objection on the specific point having been raised on the trial.—*Fowler v. State*, 99 Md. 594, 58 Atl. 444.

(f) Where, in an action by a sheriff to recover from an execution creditor the amount which the sheriff has been compelled to pay because the levy made by direction of such creditor was excessive, no special objection is filed to plaintiff's prayer for an instruction that there was no evidence that the sum which the plaintiff had been compelled to pay was for an excessive levy, advantage cannot be taken of such defect on appeal.—*Arnold v. Fowler*, 94 Md. 497, 51 Atl. 299, 89 Am. St. Rep. 444.

(g) A general objection to evidence will not avail, where any part of such evidence is not subject to the objection.—*Buss v. Brooke*, 3 Gill 198, 43 Am. Dec. 321; *Emory v. Owings*, 3 Md. 178; *Wright v. Brown*, 5 Md. 37; *Morrison v. Whiteside*, 17 Md. 452, 79 Am. Dec. 661; *Colvin v. Warford*, 20 Md. 357; *Oelrichs v. Ford*, 21 Md. 489; *Folk v. Wilson*, *Ibid.* 538, 83 Am. Dec. 599; *Everett v. Neff*, 28 Md. 176; *Trahern v. Colburn*, 63 Md. 99; *Moore v. McDonald*, 68 Md. 321, 12 Atl. 177.

(h) A general objection to evidence which is admissible for any purpose, is insufficient.—*Pegg v. Warford*, 7 Md. 582; *Nutwell v. Tongue's Lessee*, 22 Md. 419.

(i) Upon an application to exclude evidence already admitted, the onus is on the party applying to confine his objection to that part which is illegal.—*Carroll's Lessee v. Granite Mfg. Co.*, 11 Md. 399.

(j) Where testimony is offered for several purposes, and it is admissible for any one of them, a general objection will not be sustained. The party objecting should point out the purpose to which the testimony had no legal application and ask its exclusion for that purpose.—*Carroll v. Ridgaway*, 8 Md. 328.

(k) Evidence admissible generally, being offered for three specified objects in the

alternative, if legally admissible for any one of said objects, is rightly admitted, and it is the duty of the opposing counsel to point out the purpose to which it does not apply, and to pray for its exclusion for such purpose.—*Pegg v. Warford*, 7 Md. 582.

(l) A general exception to the admissibility of evidence raises all questions relative thereto.—*Young v. Mackall*, 4 Md. 362.

(m) Where a general objection is taken to the admissibility of a mass of testimony, some of which is admissible, and the court admits the whole, and proceeds to pronounce to the jury an opinion that certain portions of the same are admissible, the appellate court, if any such specified portions are legally inadmissible, must reverse the judgment.—*Budd v. Brooke*, 3 Gill 198, 43 Am. Dec. 321.

### § 232. Scope and effect of objection.

(a) Where the court, in an action for personal injuries, tried on the general issue, grants the defendant's prayer that no evidence had been offered sufficient to entitle plaintiff to recover, and directs a verdict for defendant, the question of contributory negligence, though not presented by the prayer, may be considered on appeal.—*Roth v. Highways Commission of Baltimore County*, 115 Md. 469, 80 Atl. 1031.

(b) Any legal objection to any part of a complex question of several members will properly exclude the whole upon general objection made; and the onus is on the proposer to show that it is unobjectionable, and not on the court or objector to separate the legal part from the illegal.—*Carroll's Lessee v. Granite Mfg. Co.*, 11 Md. 399.

(c) If objection be made to the admissibility of testimony in the court below, the party so objecting is not, upon appeal, confined to the objection which was there relied on.—*Winter v. Donovan*, 8 Gill 375.

### § 233. Mode of making objection in general.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 234. Necessity of motion presenting objection.

#### *Cross-References.*

Requisites of record, see post, § 499.

In boundary proceedings, see "Boundaries," § 44.

### § 235.— In general.

(a) When the court fails to submit the issue of sufficiency of assets in a suit against an administrator, in which such question is raised by the pleadings and evidence, the failure to move in arrest of judgment prevents the consideration thereof on appeal.—*Gill v. Staylor*, 93 Md. 453, 49 Atl. 650.

(b) For the purpose of appeal the objection that the jury was not resworn after bringing in an additional party by amendment can only be made by motion in arrest of judgment.—*Thillman v. Neal*, 88 Md. 525, 42 Atl. 242.

(c) In the absence of a motion in arrest of judgment, an irregularity in the form of the verdict will not be considered on appeal, act 1825, c. 117 (Code, art. 5, § 9), prohibiting reversal or affirmance on any point not presented to the court below.—*Standard Horseshoe Co. of South Wareham v. O'Brien*, 88 Md. 335, 41 Atl. 898.

(d) That the judgment, though in accordance with the verdict, is erroneous, in that it gives damages where such could not legally be given, cannot be urged on appeal where no such question was raised in the lower court, and no motion in arrest of judgment was made.—*Cushwa v. Cushwa*, 5 Md. 44.

### § 236.— In proceedings before trial or hearing.

#### *Cross-References.*

Necessity for motion for continuance at trial, see post, § 237.

Necessity for motion in arrest to reach defect in pleadings, see post, § 238.

Necessity for objection to ruling on motion, see ante, § 189.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 237.— At trial or hearing.

#### *Cross-Reference.*

Necessity for objection to ruling on motion, see ante, §§ 210-212.

(a) No error can be imputed to a trial court in overruling a motion to strike out a certain answer, where the court admitted it, subject to objection, and it was not followed up by a motion for its exclusion at the close of all the party's evidence.—*Goodman v. Saperstein*, 115 Md. 678, 81 Atl. 695.

(b) A party desiring to challenge the sufficiency of a hypothetical question, in view of subsequent evidence adduced by the adverse party asking the question, must make an appropriate motion to that end in the trial court, and a denial of the motion will then furnish a basis for an exception which may be considered on appeal.—*Grill v. O'Dell*, 113 Md. 625, 77 Atl. 984.

(c) Where evidence is admitted subject to exception, and there is no motion to strike, the exception is not available on review.—*Moneyweight Scale Co. v. McCormick*, 109 Md. 170, 72 Atl. 537.

(d) An objection to evidence will not be reviewed on appeal, in the absence of a motion to strike after its admission.—*Knickerbocker Ice Co. of Baltimore City v. Gardiner Dairy Co.*, 107 Md. 556, 69 Atl. 405.

(e) To obtain the benefit on appeal of an objection to evidence already admitted, there must be a motion to strike it out.—*Walker v. Baldwin & Frick*, 106 Md. 619, 68 Atl. 25.

(f) Where evidence is admitted subject to exception, and no motion is thereafter made to exclude it, there is no final ruling on its admission which can be reviewed on appeal.—*Grand Fountain, United Order of True Reformers of Richmond, Va. v. Murray*, 88 Md. 422, 41 Atl. 896.

(g) The question of the admissibility of evidence admitted by consent, but subject to objection, must be raised by motion to strike it out.—*Roberts v. Bonaparte*, 73 Md. 191, 20 Atl. 918, 10 L. R. A. 689.

(h) When the question is a proper one, and the answer thereto improper, it is the duty of the court, on motion, to exclude such answer from the jury.—*Baltimore & Ohio R. Co. v. Shipley*, 39 Md. 251.

(i) When evidence is admitted by the court over the objection of counsel, but subject to exception, the party objecting should, at

some subsequent stage of the trial, move the court to exclude it; otherwise, the question of the admissibility of such evidence cannot be raised in the appellate court.—*Basshor v. Forbes*, 36 Md. 154.

(j) When, by the agreement of counsel in a cause, parol testimony explanatory of a written contract is admitted, subject to exceptions, either party may ask the exclusion of all the parol evidence, as well of that offered by himself as of that offered by the opposite party.—*Schaefer v. Baltimore Marine Ins. Co.*, 33 Md. 109.

(k) Where the incompetency of a witness is not discovered until after his examination, but before the cause is submitted to the jury, the court will exclude the evidence.—*Mitchell v. Mitchell*, 11 G. & J. 388.

#### § 238.—As to judgment, or modification or vacation of judgment.

(a) When the court fails to submit the issue of sufficiency of assets in a suit against an administrator, in which such question is raised by the pleadings and evidence, the failure to move in arrest of judgment prevents the consideration thereof on appeal.—*Gill v. Staylor*, 93 Md. 453, 49 Atl. 650.

(b) For the purpose of appeal, the objection that the jury was not resworn after bringing in an additional party by amendment can only be made by motion in arrest of judgment.—*Thillman v. Neal*, 88 Md. 525, 42 Atl. 242.

(c) In the absence of a motion in arrest of judgment, an irregularity in the form of the verdict will not be considered on appeal, act 1825, c. 117 (Code, art. 5, § 9), prohibiting reversal or affirmance on any point not presented to the court below.—*Standard Horseshoe Co. of South Wareham v. O'Brien*, 88 Md. 335, 41 Atl. 898.

(d) In the absence of objection in the trial court, in a suit for damages, as to the legal insufficiency of the evidence showing a pecuniary loss to the defendant, the question that the damages are excessive will not be considered on appeal.—*Baltimore & O. R. Co. v. State*, 60 Md. 449.

(e) That the judgment, though in accordance with the verdict, is erroneous, in that

it gives damages where such could not legally be given, cannot be urged on appeal where no such question was raised in the lower court, and no motion in arrest of judgment was made.—*Cushwa v. Cushwa*, 5 Md. 44.

(f) Though act 1825, c. 117 (Code, art. 5, § 9) does not apply to a motion in arrest of judgment, such motion must be made before the Court of Appeals will go behind a judgment by confession.—*Morgan v. Briscoe*, 4 Md. 271.

(g) By Acts 1832, c. 302 (Code, art. 5, § 36), the Court of Appeals is prohibited from reversing or affirming any decree of a court of equity on the ground that the complainant has not shown himself entitled, by proper averments in his bill, to the relief which has been granted, unless such defect was presented by an exception to the consideration of the court below; but, when neither the pleadings nor proofs show that the complainant is entitled to the relief extended to him, the appellate court may reverse the decree.—*Evans v. Iglehart*, 6 G. & J. 171.

### § 239.—As to costs.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 240.—Review of specific questions and particular decisions.

#### *Cross-Reference.*

Appealability of ex parte orders, see ante, § 128.

(a) When the court fails to submit the issue of sufficiency of assets in a suit against an administrator, in which such question is raised by the pleadings and evidence, the failure to move in arrest of judgment prevents the consideration thereof on appeal.—*Gill v. Staylor*, 93 Md. 453, 49 Atl. 650.

(b) For the purpose of appeal, the objection that the jury was not resworn after bringing in an additional party by amendment can only be made by motion in arrest of judgment.—*Thillman v. Neal*, 88 Md. 525, 42 Atl. 242.

(c) In the absence of a motion in arrest of judgment, an irregularity in the form of the verdict will not be considered on appeal, since the act 1825, c. 117 (Code, art. 5, § 9),

prohibits reversal or affirmance on any point not presented to the court below—*Standard Horseshoe Co. of South Wareham v. O'Brien*, 88 Md. 335, 41 Atl. 898.

(d) That the judgment, though in accordance with the verdict, is erroneous, in that it gives damages where such could not legally be given, cannot be urged on appeal where no such question was raised in the lower court, and no motion in arrest of judgment was made.—*Cushwa v. Cushwa*, 5 Md. 44.

### § 241.—Sufficiency and scope of motion.

#### *Cross-Reference.*

Necessity of ruling on motion, see post, § 242.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 242. Necessity of ruling on objection or motion.

#### *Cross-Reference.*

Requisites of record, see post, § 500.

(a) The Court of Appeals is precluded by Code, art. 5, § 9, and court rule 4 (set out in 44 Atl. v), from examining the legal sufficiency of evidence to support a granted prayer, unless it appears that the question was determined by the court below.—*Zell v. Dunaway*, 115 Md. 1, 80 Atl. 215.

(b) Objection was made in appellant's brief to the evidence of a medical witness because some of his testimony was based in part on the evidence of two witnesses whom he heard testify at the trial below, and not on a hypothetical statement of facts, but no objection on this ground, was made at the time the evidence was given, and the motion to exclude it was based on other grounds. *Held*, that, as the question did not appear to have been decided in the court below, it could not be raised on appeal, Code, art. 5, § 9, providing that in no cause shall the Court of Appeals decide any question which was not decided by the court below.—*Buck v. Brady*, 110 Md. 568, 73 Atl. 277.

(c) The admission of evidence subject to exception is not such a ruling as can be reviewed on appeal.—*Flach v. Gottschalk Co. of Baltimore City*, 88 Md. 368, 41 Atl. 908, 42 L. R. A. 745, 71 Am. St. Rep. 418.

(d) An order of an orphans' court sending to a jury three out of four issues tendered upon a claim by an executor against the estate, and taking no notice of a fourth, is in effect a refusal of such fourth issue, and on appeal the party prejudiced thereby may avail himself of the objection that it has been refused.—*Yingling v. Hesson*, 16 Md. 112.

**§ 243. Effect of failure to make objection.**

**§ 244.— Objections deemed to have been made.**

**§ 245.— Want of opportunity to object.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 246.** (Omitted from the classification used herein.)

**§ 247. Adding to or changing grounds of objection.**

*Cross-References.*

Nature and theory of cause in lower court as affecting issues presented for review, see ante, § 171.

Scope and effect of objection made, see ante, § 232.

(a) If objections be made to the admissibility of testimony in the court below, the party so objecting is not, upon appeal, confined to the objection which was there relied on.—*Winter v. Donovan*, 8 Gill 375.

**(C) EXCEPTIONS.**

*Cross-References.*

Amendment of exceptions, see post, § 886.  
Effect of separate exceptions on right to join in assignment of errors, see post, § 721.

Motion for new trial on grounds covered by exceptions, see post, § 298.

Necessity of bill of exceptions, see post, §§ 544-555.

Presentation of exceptions taken by bill case on statement or by record proper, see post, § 549.

Presumptions as to taking of exceptions, see post, § 938.

Requisites of record, see post, § 501.

Review of rulings in general as dependent on motion for new trial and exception to decision thereon, see post, § 305.

Criminal prosecutions, see "Criminal Law," §§ 1048-1059.

Effect of stipulation as to admission of evidence in another action, see "Stipulations," § 14.

For review by United States Supreme Court of decisions of territorial courts, see "Courts," § 387.

**§ 248. Necessity in general.**

*Cross-Reference.*

Requisites of record, see post, § 501.

(a) An exception to the record evidence offered in reply to a plea nul tiel record need not be formally signed before judgment rendered on the plea, nor need any prayer be submitted on the subject, in order to review the finding on that issue on appeal—*State v. Jenkins*, 70 Md. 472, 17 Atl. 392.

(b) Where a case is submitted on an agreed statement of facts to the court below, and no objections are made to the rulings of the court, or preserved in a bill of exceptions, the appellate court has no alternative but to affirm the judgment.—*Jackson v. Commissioners of Salisbury*, 66 Md. 459, 7 Atl. 563.

(c) Questions of law arising upon the pleadings and decided upon demurrer are ipso facto apparent on the face of the record, and are not properly the subjects of exceptions.—*Lee v. Rutledge*, 51 Md. 311.

(d) Because a party omitted to except to a ruling granting a prayer which instructed the jury to disregard a deed of assignment as evidence, so far as it concerned the personal property included therein, he is not to be taken as having acquiesced in that ruling, and therefore precluded from claiming, on appeal, a reversal of the judgment below for errors committed in ruling upon other prayers predicated on the assignment as in evidence.—*Mackintosh v. Corner*, 33 Md. 598.

(e) The Court of Appeals can only act upon exceptions to proof taken below, and it is not in its province to decide upon the admissibility of evidence submitted to it primarily by agreement of counsel, to be read subject to exceptions. Such action pertains to the court of original jurisdiction, and the appellate court can only review that action on appeal.—*Levy v. Taylor*, 24 Md. 282.

(f) Where there are no exceptions for the want of averments in a bill of complaint, under act 1832, § 5 (Code, art. 5, § 36), the Court of Appeals cannot consider such insufficiency.—*Thomas v. Doub*, 1 Md. 252.

(g) The act which provides for preparing a bill of exceptions in case of an appeal does not apply to motions in arrest of judgment, because, these objections being to the pleadings, the whole record is before the Court of Appeals, and the whole is examined to arrive at the proper objections.—*Newcomer v. Keedy*, 9 Gill 263.

(h) The Court of Appeals is limited, under Acts 1825, c. 117 (Code, art. 5, § 9), to a consideration of the questions presented to the trial court upon the bills of exceptions.—*Keefer v. Mattingly*, 1 Gill 182.

(i) Where the legal sufficiency of the evidence of a creditor's claim, filed with the auditor for the purpose of procuring a dividend from the proceeds of real estate sold for the payment of debts, was not excepted to in the court below, the question will not be examined upon appeal.—*Union Bank of Maryland v. Cochran*, 7 G. & J. 138.

#### § 249. Necessity on trial by court or referee in general.

##### *Cross-References.*

Exceptions to decision or findings by court, see post, § 265.

Requisites of record, see post, § 501.

Rulings as to evidence, see post, § 260.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 250. Necessity in equitable actions.

(a) Code, art. 5, § 37, providing that no defendant in a suit in equity shall object on appeal to the jurisdiction of the court below, unless the record shows that such objection was made in the lower court, is not satisfied by an objection to the jurisdiction made in argument in the lower court, but the objection must be taken by exception filed.—*Melvin v. Aldridge*, 81 Md. 650, 32 Atl. 389.

(b) Under Code 1860, art. 5, § 2<sup>e</sup> as amended by act 1861, c. 33 (Code 1911, art. 5, § 36), on an appeal from a court of equity, no objection to the competency of a witness can be made, unless it appear by the record that such objection was made by exceptions filed in the court below.—*Young v. Omohundro*, 69 Md. 424, 16 Atl. 120.

(c) In partition proceedings, B. appeared without petition, and for the first time, on

March 7, 1876, after the sale of the land under the decree, claiming to be an assignee of the interest of J., one of the defendants, excepted to the auditor's accounts because J.'s distributive share was treated by the auditor as assigned to G. The only evidence of the assignment to B. was a paper purporting to be executed on May 22, 1876, and filed on the same day in the cause. The execution of the paper was not proved, nor in any manner admitted or recognized by the parties so as to justify its admission in evidence. *Held*, that from the time and manner in which it was filed no exception was required to its admissibility in the trial court to exclude it from consideration on appeal.—*Brown v. Thomas*, 46 Md. 636.

(d) An objection to the jurisdiction of the court, taken in argument below, though passed on in the opinion below set out in the record, is insufficient, under Code, art. 5, § 37.—*Hubbard v. Jarrell*, 23 Md. 66.

(e) Under Code, art. 5, § 37, exceptions to the jurisdiction of a court of equity must be taken in the court below.—*O'Neill v. Cole*, 4 Md. 107.

(f) Though it must appear that the vendee is either insolvent, or that the complainant had exhausted all his other remedies before he filed his bill in order to sustain a decree for the sale of lands to satisfy a vendor's lien, yet, where no exceptions are taken to the averments of the bill in the court below, the omission of complainant to allege that he exhausted his remedies against defendant will not, since act 1832, c. 302 (Code, art. 5, § 36), prejudice his case before the appellate court.—*Eyler v. Crabbs*, 2 Md. 137, 56 Am. Dec. 711.

(g) The statement, in the return by the officer before whom depositions are taken, by consent or by order of court, that he returns with the deposition certain suggestions and protest, left with him to be filed by one of the parties, and the fact that certain objections, not signed, appear in the case, do not constitute "filing exceptions in the chancery court," in compliance with act 1832, c. 302 (Code, art. 5, § 36).—*Cross v. Cohen*, 3 Gill 257.

(h) The incompetency of a witness, whose evidence has been taken in a suit in equity,



will not be noticed by the appellate court, unless objected to by exceptions filed in compliance with the statute, although the usual reservation of all legal exceptions is inserted in the order for taking testimony.—*Cross v. Cohen*, 3 Gill 257.

(i) By statute (Code, art. 5, § 36), evidence cannot be objected to in the Court of Appeals, upon the ground that the witness, from whom it is derived, was examined without any previous notice to the party objecting, unless it appears by the record that the objection was taken by way of exception in the court below.—*Jones v. Hardesty*, 10 G. & J. 404, 32 Am. Dec. 180.

(j) Since act 1832, c. 302, § 5 (Code, art. 5, § 36), the admission of testimony given by a defendant, examined under a commission to take testimony, without a previous order for that purpose from the court, cannot be objected to on that ground, in the appellate court, unless it appear by the record that the objection was taken by way of exception in the court below.—*Jones v. Hardesty*, 10 G. & J. 404, 32 Am. Dec. 180.

#### § 251. Review of questions of law in general.

(a) Where the construction placed on a deed by the trial court is not satisfactory to a party, he must bring the rulings to the Court of Appeals for review by exception to the ruling.—*Cadwalader v. Price*, 111 Md. 310, 73 Atl. 273.

#### § 252. Review of rulings as to pleadings.

##### *Cross-References.*

Necessity for specific exception, see post, § 273.

Requisites of record, see post, § 501.

#### § 253.—In general.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 254.—On demurrer.

(a) No exception is necessary for the presentation of rulings on demurrers.—*Newcomer v. Keedy*, 9 Gill 263.

#### § 255.—As to amendment.

(a) The allowance of an amendment will not be reviewed, where no exception was

taken.—*Swartz v. Gottlieb-Bauernschmidt-Straus Brewing Co.*, 109 Md. 393, 71 Atl. 854.

#### § 256.—On motion.

#### § 257. Review of rulings or orders before trial or hearing.

(a) Questions as to the nonjoinder of plaintiffs cannot be considered on appeal, in the absence of exceptions in the record presenting the question.—*Walker v. Baldwin & Frick*, 103 Md. 352, 68 Atl. 362.

#### § 258. Review of proceedings at trial.

#### § 259.—Mode and conduct of trial in general.

##### *Cross-Reference.*

Necessity for specific exception, see post, § 273.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 260.—Rulings as to evidence.

##### *Cross-References.*

Necessity for specific exception, see post, § 273.

Requisites of record, see post, § 501.

Scope and effect of exception, see post, § 274.

(a) The propriety of the admission of evidence will not be reviewed, unless the evidence is duly excepted to.—*Harris v. Hipsley*, 122 Md. 418, 89 Atl. 852.

(b) Under Code, art. 5, § 36, prohibiting any objection to be made in the Court of Appeals to the admissibility of evidence or the sufficiency of the averments of a bill, unless it appears by the record that such objection was made by exceptions filed in the court below, where, on appeal from a court of equity, no exceptions were taken below to the testimony, the case will be determined according to the evidence, whether it corresponds to the allegations of the bill or not.—*Shugars v. Shugars*, 105 Md. 386, 66 Atl. 273.

(c) Unless an exception was reserved to the ruling of a trial court in rejecting evidence, its action will not be reviewable on appeal.—*Thorne v. Fox*, 67 Md. 67, 8 Atl. 667.

(d) Where a cause is tried by the court without a jury, erroneous admission of evidence cannot be reviewed on appeal unless

excepted to.—*McCullough v. Biedler*, 66 Md. 283, 7 Atl. 454.

(e) Error in the admission of evidence will not be considered on appeal, where no exception is taken to the ruling admitting it.—*Mahoney v. Mackubin*, 54 Md. 268.

(f) Exceptions to the form of proof not taken in the court below will not be considered on appeal.—*Patterson v. Gelston*, 23 Md. 432.

(g) When evidence has been received without objection, and prayers predicated upon it have been granted by the court, it is too late to ask the court to reject it.—*Davis v. Patton*, 19 Md. 120.

(h) Exceptions to testimony before the justice taking it, if not filed as required by act 1832, c. 302 (Code, art. 5, § 36), in the court below, will not be entertained, although the evidence would have been excluded by exceptions properly filed.—*Cherry v. Stein*, 11 Md. 1.

(i) Where no exceptions are taken to the testimony in the court below by a party who has appeared to the suit and failed to answer, none can be entertained by this court.—*Long v. Long*, 9 Md. 356.

(j) Parol evidence showing that the words "his heirs and assigns" were purposely omitted in a covenant was admitted without exception in the court below. *Held*, that under act 1832, c. 302 (Code, art. 5, § 36), such evidence will be allowed by the appellate court to render the contract personal.—*Gibbs v. Gale*, 7 Md. 76.

(k) A general reservation of the right to object to evidence will not give any right to object in the Court of Appeals, unless it has been availed of below by special exceptions to the portions of the testimony deemed inadmissible.—*Coates v. Sangston*, 5 Md. 121.

(l) No exceptions having been taken to testimony in the court below, the objection that a part of it is hearsay cannot now be raised.—*Key v. Knott*, 9 G. & J. 342.

#### § 261.—Rulings as to arguments and conduct of counsel.

##### *Cross-Reference.*

Requisites of record, see post, § 500.

(a) Where the record does not show an

exception to the ruling of the court allowing counsel to argue upon certain evidence, the judgment will not be reversed upon that account.—*Brinkley v. Platt*, 40 Md. 529.

#### § 262.—Rulings as to submission of case or question to jury.

##### *Cross-References.*

Necessity for specific exception, see post, § 273.

Requisites of record, see post, § 500.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 263.—Instructions, and failure or refusal to give instructions.

##### *Cross-References.*

Instructions not excepted to as law of the case, see post, § 853.

Necessity for request for instructions in addition to exceptions to those given, see ante, § 216.

Necessity for specific exception, see post, § 273.

Necessity for timely exceptions, see post, § 272.

Presentation of exceptions taken by bill of exceptions, case, or statement, see post, § 549.

Presumptions in absence of exceptions, see post, § 928.

Requisite of record, see post, § 501.

Scope and effect of exception, see post, § 274.

(a) Where there is no exception to the charge that the possession of a single bill by plaintiff's intestate is prima facie evidence of the sealing and delivery of the same, no question can arise as to whether there was evidence of the delivery of the bill.—*Junkins v. Sullivan*, 110 Md. 539, 73 Atl. 264.

(b) The giving or refusing of instructions to which no exception was taken in the trial court cannot be reviewed.—*Mount Vernon Brewing Co. v. Teschner*, 108 Md. 158, 69 Atl. 702.

(c) The overruling of special exceptions to prayers cannot be reviewed in the absence of exception thereto shown by the record.—*Baltimore Briar Pipe Co. v. Eisenhauer*, 107 Md. 704 (memo. report), 66 Atl. 623 (full report).

(d) Instructions, not excepted to, cannot be reviewed on appeal.—*Bently Shriver & Co. v. Edwards*, 100 Md. 652, 60 Atl. 283.

(e) Instructions, not excepted to, will not

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

be reviewed.—*Vonderhorst Brewing Co. v. Amrhine*, 98 Md. 406, 56 Atl. 833.

(f) Where the court refused all of the appellant's prayers as offered, but granted two with modifications, and no appeal was taken from the action in modifying the prayers, the exceptions not including the modifications, the court's action in making the modifications cannot be considered on appeal.—*Brish v. Carter*, 98 Md. 445, 57 Atl. 210.

(g) An assignment of error on the refusal of the court to give a request will not be considered, when no exception is taken.—*Lewis v. Tapman*, 90 Md. 294, 45 Atl. 459, 47 L. R. A. 385; *Commercial & Farmers' Nat. Bank v. McCormick*, 97 Md. 703, 55 Atl. 703.

(h) On an appeal from an order refusing a writ of mandamus, where the issues of fact were tried by the trial court without a jury, the appellate court is not confined to a review of the rulings on questions of law and exceptions, since the court must determine whether the writ was properly refused or not from an inspection of the whole record; and hence no advantage can be taken of plaintiff's failure to except to an adverse change in his instructions by the trial court.—*Manger v. Board of State Medical Examiners*, 90 Md. 659, 45 Atl. 891.

(i) Objection that there was no evidence to support facts assumed by an instruction cannot be considered, exception not having been taken below under Code, art. 5, § 9.—*Gunther v. Dranbauer*, 86 Md. 1, 38 Atl. 33.

(j) Instructions to the jury will not be reviewed by the appellate court, unless excepted to by the party complaining of them.—*Baltimore & O. R. Co. v. Shipley*, 81 Md. 373; *Delaware State Fire & Marine Ins. Co. v. Shaw*, 54 Md. 546; *Pennsylvania R. Co. v. Reichert*, 58 Md. 261.

(k) If an instruction be granted by consent, that consent makes the instruction the law of the case when brought before the appellate court on appeal.—*Baughner v. Wilkins*, 16 Md. 35, 77 Am. Dec. 279.

(l) Error cannot be assigned to a refusal of the court to give certain instructions unless the refusal was duly excepted to.—*Cloud v. Needles*, 6 Md. 501.

(m) Where plaintiff only excepts to the refusal of the court to give instructions as sought, the appellate court cannot inquire into the legal soundness of instructions which the court did give.—*Hayes v. Lusby*, 5 H. & J. 485.

## § 264. Exceptions to verdict or findings by jury.

### Cross-References.

Necessity for specific exceptions, see post, § 273.

Necessity for timely exception, see post, § 272.

Presentation of exceptions taken by bill of exceptions, case, or statement, see post, § 549.

Scope and effect of exception, see post, § 274.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 265. Exceptions to decision or findings by court.

### Cross-References.

Necessity for specific exception, see post, § 273.

Necessity for timely exception, see post, § 272.

Presentation of exceptions taken by bill of exceptions, case, or statement, see post, § 549.

Requisites of record, see post, § 501.

Review of sufficiency of evidence, see post, § 268.

Scope and effect of exception, see post, § 274.

In suit against United States, see "United States," § 146.

(a) Act 1825, c. 117 (see Code, art. 5, § 36), prohibiting the reversal of a decree in the appellate court on exceptions to an account not appearing by the record to have been taken in the court below, does not apply to a formal account, exhibiting merely a statement of the rights of the parties as solemnly adjudicated by the court below in a previous order.—*Miller v. Allison*, 8 G. & J. 35.

(b) An audit may be examined on appeal, although no exceptions were taken to it below, and if the chancellor acted on improper testimony, or mistook the principles of law, the audit will be reformed or the decree reversed. But it is no error if he act upon certain evidence according to long usage and practice in his court.—*Maccubbin v. Cromwell*, 2 H. & G. 443.

**§ 266. Exceptions to rulings, report, or findings of referee, commissioner, or auditor.**

*Cross-References.*

Necessity for specific exception, see post, § 273.

Necessity for timely exceptions, see post, § 272.

Presentation of exceptions taken by bill of exceptions, case, or statement, see post, § 549.

Requisites of record, see post, § 501.

Review of sufficiency of evidence, see post, § 268.

Scope and effect of exception, see post, § 274.

(a) Objection to an auditor's report will not be considered where no specific grounds of exception were taken to it until the hearing in the Court of Appeals.—*Darby v. Rouse*, 75 Md. 26, 22 Atl. 1110.

(b) No objection to an auditor's report which is not included in the exceptions thereto will be considered on appeal from an order confirming such report.—*Darby v. Rouse*, 75 Md. 26, 22 Atl. 1110.

(c) The order of the lower court reviewing an auditor's account will not be reversed on appeal for errors in the accounting not excepted to below.—*Perkins v. Emory*, 55 Md. 27.

(d) Where accounts are stated by the auditor to represent the views and claims of the respective parties under their instructions, such accounts may be reviewed on appeal, though no exception thereto was taken in the court below by either party.—*Walter v. Foutz*, 52 Md. 147.

(e) Under act 1861, c. 33 (Code, art. 5, § 36), an objection to the ratification of an auditor's report cannot be raised for the first time on appeal.—*Citizens' Security & Land Co. v. Wilson*, 50 Md. 90.

(f) Exceptions to an award of referees or arbitrators are analogous to a motion in arrest of judgment, and are not within the operation of Acts 1825, c. 117 (see Code, art. 5, §§ 9, 36), and may be inquired into by the appellate court, although it does not appear from the record that they were raised and decided in the court below.—*Grove v. Swartz*, 45 Md. 227.

(g) When an account is stated by an auditor, not as representing his own views

of the rights of the parties, but, under instructions from one of the parties, as a mode of presenting and illustrating his own claim, the fact that no exceptions were taken in the court below to such account will not prevent parties affected thereby from taking objections thereto in the appellate court.—*Anderson v. Tuck*, 33 Md. 225.

(h) A report by the auditor, made as to its details in accordance with the instructions of the respective parties, is open to objections, without being specifically excepted to.—*Dennis v. Dennis*, 15 Md. 73.

(i) An auditor's report, founded upon proof in the record, must be excepted to at the time, or its errors will not be corrected on appeal.—*Oliver v. Palmer*, 11 G. & J. 426.

(j) The appellate court may examine into rights put in issue by the pleadings, and which do not depend upon the state of the accounts, where an account may be necessary to determine the extent of a claim, although accounts have been stated, in an auditor's report directed below, involving a determination of those rights, and no exceptions filed.—*Wells v. Beall*, 2 G. & J. 458.

(k) An auditor's report may be excepted to in the appellate court, and the whole accounts gone into, whether general or special exceptions, or none at all, have been taken in the court below.—*Ringgold v. Ringgold*, 1 H. & G. 11, 18 Am. Dec. 250.

**§ 267. Exceptions to judgment.**

*Cross-References.*

Exceptions to decision on report of referee or master, see ante, § 266.

Interlocutory orders, see ante, § 257.

Judgment on the pleadings, see ante, § 256.

Necessity for specific exception, see post, § 273.

Necessity for timely exceptions, see post, § 272.

Presentation of exceptions taken by bill of exceptions, case, or statement, see post, § 549.

Requisites of record, see post, § 501.

Review of sufficiency of evidence, see post, § 268.

Scope and effect of exception, see post, § 274.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 268. Review of sufficiency of evidence to sustain verdict, findings, or judgment.**

(a) Questions as to the sufficiency of evidence cannot be considered on appeal, in the absence of exceptions in the record presenting the question.—*Walker v. Baldwin & Frick*, 103 Md. 352, 63 Atl. 362.

(b) An exception to a ruling, for want of sufficient evidence to justify it, will not enable the appellant to avail himself, upon appeal, of a particular defect in the evidence not specified upon the trial.—*Baltimore & O. R. Co. v. Mali*, 66 Md. 53, 5 Atl. 87.

(c) The amount of damages assessed is not open for revision in the appellate court, when no exception on that ground has been taken, unless they exceed the amount claimed in the declaration.—*Norris v. Wrenschall*, 34 Md. 502.

**§ 269. Review of amount of recovery or relief awarded.**

**§ 270. Exceptions to rulings and orders after trial or judgment.**

(a) After a verdict "for the petitioners" in an insolvency proceeding, a motion in arrest of judgment, on the ground that no formal issues were made up and submitted to the jury, cannot be considered on appeal, where the record fails to show that any demand for the proper issues was made, or any exception taken, because they were refused.—*Bowland v. Wilson*, 71 Md. 307, 18 Atl. 536.

**§ 271. Review of decisions of intermediate courts.**

**§ 272. Necessity of timely exception.**

*Cross-Reference.*

Time for taking as subject of stipulation, see "Stipulations," § 3.

(a) Exceptions taken March 9, 1866, to an irregular order reopening an audit, made April 15, 1864, are too late.—*Price v. Merchants' Bank*, 29 Md. 369.

(b) A plaintiff offered certain evidence which was ruled out on defendant's objection. Plaintiff did not insist at the time, but in his argument on the prayers for instructions he claimed a right to rely on his evidence, and excepted to the decision of the court sustaining defendant's objection to

his doing so. *Held*, that he had waived his right to except.—*Cecil Bank v. Heald*, 25 Md. 562.

(c) In an action on an award, an agreement for submission to arbitration was offered in evidence as a subsisting obligation between the parties, without exception; and the defendants, a corporation, proved by a witness that the parties joined in the request that he should write the award determined on by the arbitrators, and they also offered a series of prayers, assuming as a matter of fact the agreement to be an existing contract between the parties. *Held*, that the objection, subsequently made, that the authority of the president of the company to sign the agreement was not submitted as a distinct fact to be found by the jury, came too late.—*Maryland & D. R. Co. v. Porter*, 19 Md. 458.

(d) Where a ruling is submitted to at the time without exceptions, no exception thereafter will be allowed to be taken at a subsequent stage of the trial.—*Hagan v. Hendry*, 18 Md. 177.

(e) Exceptions to the admissibility of evidence must be filed in the cause before the passage of the decree in the court of chancery, or they will not be considered on appeal.—*Fitzhugh v. McPherson*, 9 G. & J. 51.

**§ 273. Necessity of specific exception.**

*Cross-Reference.*

Specification of errors in general, see post, §§ 724-734.

(a) Where prayers given announced correct principles of law and there are no special exceptions filed to them, the Court of Appeals cannot decide whether there was in the case any legally sufficient evidence to support the hypotheses of facts stated in the prayers.—*Mullen v. Brydon*, 117 Md. 554, 83 Atl. 1025.

(b) An exception to a ruling that under the pleadings and evidence plaintiff was not entitled to recover raises no question as to the legal sufficiency of plaintiff's evidence.—*Sumwalt Ice Co. v. Knickerbocker Ice Co. of Baltimore City*, 114 Md. 403, 80 Atl. 48.

(c) An objection to an instruction not raised by special exception in the trial court cannot be made on appeal.—*Williary v. Nagle*, 113 Md. 614, 77 Atl. 680.

(d) Exceptions to testimony should be so framed as to clearly point out that objected to, so that it can be designated in the appellate court in case of appeal.—*Matthews v. Targarona*, 104 Md. 442, 65 Atl. 60.

(e) It is not necessary that a special exception should be filed in order to secure on appeal the consideration of a rejected prayer.—*Richard J. Biggs & Co. v. E. Langhammer & Son*, 103 Md. 94, 63 Atl. 198.

(f) Where counsel asked leave to except to the comments of the court in ruling on the prayers for instructions in the presence of the jury, but, on inquiry as to what remark of the court was objectionable, said that he did not recall, that it was a common practice and a general objection, the exception was too general and indefinite to be considered on appeal.—*Joseph Joseph Bros. Co. v. Schonthal Iron & Steel Co.*, 99 Md. 382, 58 Atl. 205.

(g) Exceptions to evidence, which do not clearly indicate the testimony excepted to and the grounds on which the objections are based, will not be considered on appeal.—*Baker v. Safe-Deposit & Trust Co.*, 93 Md. 368, 48 Atl. 920; rehearing denied, 93 Md. 368, 49 Atl. 623.

(h) Where a prayer for an instruction which was granted assumed that there was evidence on a certain point to be considered by the jury, in the absence of a special exception to such point the Court of Appeals, under its fourth rule, cannot inquire whether there was such evidence or not.—*Gambrill v. Schooley*, 89 Md. 546, 43 Atl. 918.

(i) Act 1890, c. 525 (see Code, art. 33, § 25), provides for an appeal from the officers of voting registration to the Superior Court of Baltimore City, and the judges of the circuit courts. Questions arising on such appeals are heard by the court without a jury. The act further declares that exceptions may be taken to the rulings of the court below, and "appeal allowed to the Court of Appeals as in other cases." On such an appeal the only exception taken was to the order of the court directing the appellee to be registered as a voter. *Held*, that Code, art. 5, § 9, providing that no question

shall be considered by the Court of Appeals which does not appear by the record to have been raised below, does not apply to this proceeding, and such exception was sufficient to bring up the whole record, and raise the question as to the legality of the order.—*Shaeffer v. Gilbert*, 73 Md. 66, 20 Atl. 434.

(j) A general exception to the allowance to a trustee of "a list of claims" will not be considered, for indefiniteness.—*Burroughs v. Bunnell*, 70 Md. 18, 16 Atl. 447.

(k) The amount of damages assessed is not open for revision in the appellate court, when no exception on that ground has been taken, unless they exceed the amount claimed in the declaration.—*Norris v. Wrenschall*, 34 Md. 502.

(l) Where part of the evidence embraced in an exception is admissible, and part not, it is improper to reject the whole.—*Marshall v. Haney*, 4 Md. 498, 59 Am. Dec. 92.

(m) A single exception to the refusal of three prayers raises the question of the correctness of the ruling on each, as if an exception had been taken to the refusal of each prayer separately.—*Planters Bank v. Bank of Alexandria*, 10 G. & J. 346.

(n) A general exception is not sufficient; the exceptions must be sufficiently specific to apprise the opposite party of the particular witnesses or evidence designed to be excepted to.—*Berrett v. Oliver*, 7 G. & J. 191.

(o) An error not specifically pointed out by any of the exceptions so as to satisfy the Court of Appeals that the court below made a determination thereon, will not be considered.—*Lyles v. Hatton*, 6 G. & J. 122.

#### § 274. Scope and effect.

(a) The court having stricken out certain evidence received subject to exception, the witness was allowed to depart without cross-examination on that point. The next day the court changed its ruling and admitted the evidence, whereupon exception was taken to the action of the court "in overruling the motion to strike out the testimony and also changing its ruling" at that time and in that manner. *Held*, that the objection that the right to cross-examination was lost was not presented by the ex-

ception; there having been no request to recall the witness for cross-examination, or to hold the case open to permit his attendance to be procured therefor.—*Dudderar v. Dudderar*, 116 Md. 605, 82 Atl. 453.

(b) Code, art. 5, § 36, providing that on an appeal from a court of equity no objection to the competency of a witness, or the admissibility of evidence, or to the sufficiency of the averments of a bill or petition, etc., shall be made in the Court of Appeals, unless it shall appear by the record that such objection was made by exceptions filed in the court from which such appeal shall have been taken, was not complied with where, when a witness was asked to produce a receipt, an exception was noted, but no exception was filed to the testimony of the witness or to the introduction of the receipt in evidence.—*Gerting v. Wells*, 103 Md. 624, 64 Atl. 298, 433.

(c) An exception to the admission of evidence stated the question objected to, that it was overruled and excepted to, and concluded in the usual way. A second exception began by stating, "The witness then, in answer to the said interrogatory excepted to, replied," etc. *Held*, that the exceptions were sufficiently connected to enable the appellate court to consider the first in connection with the second.—*Brashears v. Orme*, 93 Md. 442, 49 Atl. 620.

(d) Act 1890, c. 525 (see Code, art. 33, § 25), provides for an appeal from the officers of voting registration to the Superior Court of Baltimore City, and the judges of the circuit courts. Questions arising on such appeals are heard by the court without a jury. The act further declares that exceptions may be taken to the rulings of the court below, and "appeal allowed to the Court of Appeals as in other cases." On such an appeal the only exception taken was to the order of the court directing the appellee to be registered as a voter. *Held*, that Code, art. 5, § 9, providing that no question shall be considered by the Court of Appeals which does not appear by the record to have been raised below, does not apply to this proceeding, and such exception was sufficient to bring up the whole

record, and raise the question as to the legality of the order.—*Shaeffer v. Gilbert*, 73 Md. 66, 20 Atl. 434.

### § 275. Necessity of ruling on exception.

(a) Exceptions appearing to have been filed five days after the decree was passed, and not appearing to have been acted on in the trial court, as required by equity rule No. 43 (Code, art. 16, § 259), will not be considered on appeal.—*Nalle v. Safe Deposit & Trust Co.*, 120 Md. 187, 87 Atl. 770.

(b) The trial court not having ruled on special exceptions to prayers for instructions, the legal propositions in which granted prayers are conceded to be correct, the questions intended to be raised by the exceptions are not open to consideration on appeal.—*Modern Woodmen of America v. Cecil*, 108 Md. 357, 70 Atl. 331.

(c) Exceptions which are not insisted upon in the trial court and a ruling obtained are not available on appeal.—*Canton Co. of Baltimore v. Baltimore & O. R. Co.*, 99 Md. 202, 57 Atl. 637.

(d) Where there is no ruling by the trial court to special exceptions to the granting of a requested instruction, the giving of such instruction will not be reviewed on appeal.—*Gambrill v. Schooley*, 95 Md. 260, 52 Atl. 500, 63 L. R. A. 427.

(e) An exception to a prayer for want of legal evidence to sustain it can only be brought before the appellate court by procuring a ruling thereon in the trial court.—*Travelers' Ins. Co. v. Parker*, 92 Md. 22, 47 Atl. 1042.

(f) Where the court overrules an objection to the competency of a witness, and the party making it is preparing his exception, he does not waive the benefit of it by examining the witness as to the points in issue before the exception is signed and sealed.—*Owings v. Low*, 7 H. & J. 124.

### §§ 276, 277, 278, 279. Effect of failure to take proper exception.

### § 280. Waiver of exceptions.

#### Cross-Reference.

By failure to obtain ruling, see *ante*, § 275.

(a) Exceptions as to the admission of evidence of a fact are rendered immaterial by

the admission of counsel, on the hearing of the appeal, of the existence of such fact.—*Colonial Park Estates v. Massart*, 112 Md. 648, 77 Atl. 275.

(b) All exceptions taken at the trial below being abandoned by counsel for the plaintiffs, except the first, there remain only the questions arising thereunder to be considered.—*Boteler v. State*, 8 G. & J. 359.

(c) Where the court overrules an objection to the competency of a witness, and the party making it is preparing his exception, he does not waive the benefit of it by examining the witness as to the points in issue before the exception is signed and sealed.—*Owings v. Low*, 7 H. & J. 124.

#### (D) MOTIONS FOR NEW TRIAL.

##### *Cross-References.*

Defects in motion as ground for dismissing appeal in general, see post, § 783.

Grounds for sustaining decision not considered, see post, § 856.

Necessity for exceptions to rulings as affected by motion for new trial, see ante, §§ 263, 265.

Pendency of motion as precluding appeal, see ante, § 13.

Proceedings constituting part of record, see post, § 523.

Requisites of record, see post, § 502.

Review of proceedings on motion as dependent on presentation of grounds in lower court, see ante, § 222.

Scope and extent of review on appeal from decision on motion, see post, § 867.

In suits for divorce, see "Divorce," § 179.

Presentation of federal question for review of decision of state court by United States Supreme Court, see "Courts," § 396.

§§ 281, 282, 283. Necessity.

§§ 284-286; 287-292. Review.

§ 293. Review of objections to verdict, findings, or judgment.

(a) An objection that the verdict or amount of recovery is excessive is not available on appeal.—*Baltimore Belt R. Co. v. McColgan*, 83 Md. 650, 35 Atl. 59.

§ 294. Review of sufficiency of evidence to sustain verdict, findings, or judgment.

##### *Cross-References.*

Requisites of record, see post, § 502.

Scope and sufficiency of statement of grounds, see post, § 302.

§ 295. Review of amount of recovery or relief awarded.

##### *Cross-Reference.*

Scope and sufficiency of statement of grounds, see post, § 302.

§ 296. Review of decisions on motions after trial or judgment.

##### *Cross-References.*

Requisites of record, see post, § 502.

§ 297. Review of decisions of intermediate courts.

§ 298. Motion on grounds covered by exceptions or motion in arrest.

##### *Cross-References.*

Exception on ground covered by motion, see ante, §§ 248, 260, 261, 263.

Necessity for motion in arrest, see ante, § 238.

§ 299. Review on direct bill of exceptions.

§ 300. Necessity of timely motion.

##### *Cross-Reference.*

Requisites of record, see post, § 502.

§ 301. Necessity of statement of grounds.

##### *Cross-Reference.*

Necessity for objection to insufficiency of statement, see ante, § 222.

§ 302. Sufficiency and scope of statement of grounds.

##### *Cross-Reference.*

Specification of errors in general, see post, §§ 724-734.

§ 303. Authentication of statement of grounds.

§ 304. Necessity of ruling or order on motion.

##### *Cross-References.*

Grounds for sustaining decision not considered, see post, § 856.

Requisites of record, see post, § 502.

§ 305. Necessity and sufficiency of exception to decision.

§ 306. (Omitted from this title in the classification used herein.)

#### (E) CASES AND QUESTIONS RESERVED OR CERTIFIED.

##### *Cross-References.*

As form of remedy, see ante, § 8.

Certificate as to grounds of appeal, see post, § 366.

Power of lower court to dismiss after reservation of questions, see post, § 436.



Retroactive operation of statute relating to cases reserved, see ante, § 2.

Scope and extent of review, see post, § 861.

Bankruptcy proceedings, see "Bankruptcy," § 459.

From United States Circuit Court of Appeals to Supreme Court, see "Courts," § 384.

From United States Circuit Court to Supreme Court on division of opinion, see "Courts," § 386.

In criminal prosecutions, see "Criminal Law," § 1068.

Review of rulings of election officers, see "Elections," § 224.

No paragraphs under this sub-division in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### §§ 307-312. Nature and grounds of reservation or certification.

#### *Annotation.*

Definiteness of question to be certified.—31 L. R. A. 392, note.

§ 313. (Omitted from this title in the classification used herein.)

§ 314. Time for reservation or certification.

§ 315. Proceedings to procure certificate.

§ 316. Requisites and sufficiency of reservation or certificate.

§ 317. (Omitted from this title in the classification used herein.)

§ 318. Verdict or judgment subject to opinion of appellate court.

§ 319. Exceptions ordered to be heard in appellate court in first instance.

§ 320. Report of case or of evidence for consideration by appellate court.

## VI. PARTIES.

### *Cross-References.*

Application for rehearing, see post, § 833.

Decision on death or change of parties, see post, § 1109.

Dismissal for want of interest, see post, § 780.

Parties entitled to allege error, see post, §§ 877-884.

Parties entitled to notice of appeal, see post, §§ 413-415.

Parties on whom case or statement may or must be served, see post, § 565.

Persons entitled to review, see ante, §§ 136-152.

Reversal as to one or more co-parties, see post, § 1173.

Right to abandon appeal and join in another, see post, § 805.

Scope and extent of relief dependent on parties, see post, §§ 1116-1121.

To motion to dismiss, see post, § 796.

Accounting of executor or administrator, see "Executors and Administrators," § 510.

Appeal from judgment confirming municipal improvement assessment, see "Municipal Corporations," § 508.

Appeals by township, see "Towns," § 83.

Appeals from justices' court, see "Justices of the Peace," § 152.

Bankruptcy proceedings, see "Bankruptcy," §§ 444, 460.

Condemnation proceedings, see "Eminent Domain," § 256.

Criminal prosecutions, see "Criminal Law," § 1070.

Drainage proceedings, see "Drains," § 36.

Election contest, see "Elections," § 305.

In actions by or against husband or wife, see "Husband and Wife," § 243.

In admiralty, see "Admiralty," § 106.

In divorce suits, see "Divorce," § 180.

On appeal from order appointing administrator, see "Executors and Administrators," § 20.

On appeal from order removing administrator, see "Executors and Administrators," § 35.

On review in United States Supreme Court of decisions of state courts, see "Courts," § 395.

Probate proceedings, see "Wills," § 361.

§ 321. Appellants or plaintiffs in error.

§ 322.— Proper or necessary parties in general.

(a) The plaintiffs filed a creditors' bill against R. F., a judgment debtor, the parties to whom he had confessed judgment, and the grantees to whom he had made conveyances, seeking to have the assets properly marshaled; and a decree was issued for a sale of the property, including certain property conveyed to B. Held, on appeal from said decree taken by B. and wife, that R. F. had no interest in the subject-matter of the controversy, and was not a necessary party to the appeal.—Bouldin v. Bank of Commerce, 21 Md. 44.

§ 323.— Separate proceeding by one or more co-parties.

### *Cross-References.*

Appellees to separate proceedings by one or more co-parties, see post, § 327.

Consolidation, see post, § 816.

Effect on powers of lower court, see post, § 451.

Necessity of giving notice to co-party, see post, § 415.

Right to separate appeal, see ante, § 145.  
Time for taking proceedings, see post, § 342.

(a) Under act 1835, c. 380 (see Code, art. 5, §§ 26, 27), any one defendant, on filing an answer, can appeal from an order granting injunction, without waiting for the answer of his co-defendants.—*Alexander v. Worthington*, 5 Md. 471.

#### § 324.—Summons and severance.

##### *Cross-References.*

Will contest, see "Wills," § 361.

Appeal from order of distribution of decedent's estate, see "Executors and Administrators," § 314.

(a) Where one of two or more parties against whom a judgment has been entered at law desires to appeal, he should apply to the Court of Appeals for a writ of summons and severance.—*Firor v. Taylor*, 116 Md. 69, 81 Atl. 389.

(b) Where objection is made to entertaining an appeal on the ground that all parties to a joint judgment have not united in the appeal and an order to show cause why a writ of summons and severance should not issue cannot be served on the party not appealing because he cannot be found, the better practice is for appellant to then support his application for a severance by affidavits tending to show what efforts had been made to find the other party or to have him unite in the appeal.—*Philadelphia, B. & W. R. Co. v. Stumpo*, 112 Md. 571, 77 Atl. 266.

(c) Where a judgment at law was rendered against three persons jointly, two of them could not prosecute an appeal therefrom without the issuance of a summons to the third by the appellate court, and the granting of a severance.—*Oldenburg & Kelley v. Dorsey*, 102 Md. 172, 62 Atl. 576.

(d) Where some of the defendants below do not join in bringing the writ of error, they ought to be summoned and severed.—*Cumberland Coal & Iron Co. v. Jeffries*, 21 Md. 375.

#### § 325.—Joinder.

(a) Substantial parties to a decree in chancery must all join in an appeal there-

from.—*Lovejoy v. Ireland*, 17 Md. 525, 79 Am. Dec. 667. (See Code, art. 5, § 26.)

(b) Where a decree against a husband did not preclude his wife from becoming a party to the action, she may, after rendition of the decree, join with him as a party defendant, and they may jointly appeal from the decree.—*Bouldin v. Bank of Commerce*, 21 Md. 44.

#### § 326. Appellees, respondents, or defendants in error.

##### *Cross-Reference.*

Right to allege error, see post, § 378.

#### § 327.—Proper or necessary parties.

(a) The plaintiffs filed a creditors' bill against R. F., a judgment debtor, the parties to whom he had confessed judgment, and the grantees to whom he had made conveyances, seeking to have the assets properly marshaled; and a decree was issued for a sale of the property, including certain property conveyed to B. Held, on appeal from said decree taken by B. and wife, that R. F. had no interest in the subject-matter of the controversy, and was not a necessary party to the appeal.—*Bouldin v. Bank of Commerce*, 21 Md. 44.

#### § 328.—Joinder.

#### § 329. Intervention or addition of new parties.

##### *Cross-References.*

Amendment as to parties, see post, § 366.  
Interveners for purpose of appeal, see ante, § 149.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 330. Transfer or devolution of interest.

##### *Cross-References.*

On death of party, see post, § 334.  
Pending suit, see ante, § 150.

(a) Where a trustee, after taking an appeal from a judgment overruling exceptions to the auditor's account, was removed from the trusteeship and he was not a party in the case in his individual capacity, the appeal, as to him, will be dismissed.—*Clarke v. O'Brien*, 97 Md. 739, 56 Atl. 829.

(b) Where a feme sole executrix obtained a judgment, from which there was an appeal, and pending the appeal married, it

was held that a sci. fa. was necessary to make the husband a party before a fi. fa. could regularly be issued on a judgment of affirmance.—*Townshend v. Townshend*, 10 G. & J. 373.

### § 331. Death.

#### *Cross-References.*

Effect on time for taking appeal, see post, § 349.

Will contest, see "Wills," § 361.

### § 332.— Before appeal or writ of error.

(a) Code, art. 5, §§ 75, 76, 78, permitting the prosecution of an appeal in actions at law by the personal representative of a party that has died pending suit, all have reference to cases where the appeal has been taken at the time of the death. Therefore, where a plaintiff against whom judgment has been rendered dies before entering an appeal, his personal representative cannot enter it.—*Goldschmid v. Meline*, 86 Md. 370, 38 Atl. 783.

(b) If plaintiff dies before errors assigned, the writ of error abates at common law.—*Goldschmid v. Meline*, 86 Md. 370, 38 Atl. 783.

(c) Where defendant dies before writ of error sued out or appeal taken, and there are no new parties named to represent deceased, or no existing parties upon whom the law devolves deceased's rights and liabilities, the appeal cannot be maintained.—*Harryman v. Harryman*, 49 Md. 67.

(d) On the death of defendant after dismissal of the bill, an appeal without making new parties to represent the deceased cannot be taken, under Code, art. 5, § 75, providing that no cause pending in the appellate court shall abate by the death of either of the parties to such appeal, etc.; nor under section 76, providing for the case of the death of plaintiff on appeal before the term to which such appeal is returnable to the appellate court; nor under section 77, providing that, when any party shall die while a case is under rule argument in the appellate court, said court may proceed to give judgment, etc.; nor under section 78, providing that, where one or more of the parties shall die after appeal taken and before final judgment, the surviving party

may suggest the death of deceased prior to the entry of judgment in the appellate court.—*Harryman v. Harryman*, 49 Md. 67.

(e) An appeal will not be dismissed on the ground that one of the appellants, defendants below, died before the prayer for an appeal was filed, it not clearly appearing from the record that the appeal was taken or intended to be taken in the names of both defendants.—*Grove v. Swartz*, 45 Md. 227.

(f) Act 1785, § 1 (see Code, art. 75, §§ 25, *et seq.*), providing against an action abating by the death of either party after suit brought, and authorizing the appearance of those interested, does not apply to suits in the appellate court; and, if it did, it would not authorize an appeal in the name of a person deceased.—*Owings v. Owings*, 3 G. & J. 1.

(g) Neither act 1806, c. 90, § 11 (Code, art. 5, § 77), providing that, if either of the parties in the Court of Appeals shall die after the cause has been put under rule argument, it shall not therefore abate, etc., nor act 1815, c. 149, §§ 5, 6 (Code, art. 5, § 75), providing that, on the death of appellant after an appeal, etc., the appeal shall not abate if the heir of the deceased party shall make the necessary suggestion and appear to the appeal, authorizes an appeal from a decree of the chancellor in the name of a deceased person.—*Owings v. Owings*, 8 G. & J. 1.

(h) When it appears from the record that the persons named as plaintiffs in the writ of error were dead when the writ was sued out and filed, and that their legal representatives are not parties, it will be dismissed.—*Owings v. Owings*, 8 G. & J. 1.

### § 333.— Pending appeal or writ of error.

#### *Cross-References.*

Effect on determination and disposition of cause, see post, § 1109.

Ground for abatement of action, see "Abatement and Revival," § 69.

In divorce suits, see "Divorce," § 180.

(a) Where the plaintiff in an action for malicious prosecution appeals from a judgment in favor of the defendant, and after the appeal is taken the defendant dies, no

procedendo can be awarded to plaintiff, if there should be found error in any ruling at the trial, and the proper disposition of the case will be to enter the case abated.—*Clark v. Carroll*, 59 Md. 180.

(b) Where a party to a suit dies before appeal taken, the provisions of Code, art. 5, § 75, authorizing the making of new parties by process from the appellate court, are inapplicable, there being no appeal there pending. Article 16, § 8, governs the case, under which the court below may direct such proceedings as may appear necessary to advance the purposes of justice.—*Thomas v. Thomas*, 57 Md. 504. [*Cited and annotated in 57 L. R. A. 603, on right to contest validity of divorce after death of one or both parties; in 1 L. R. A. (N. S.) 552, on vacating divorce decree after death of party.*]

(c) An appeal will not be dismissed on the ground that one of the appellants (defendants below) died before the prayer for an appeal was filed, it not clearly appearing, from the record, that the appeal was taken, or intended to be taken, in the names of both defendants.—*Grove v. Swartz*, 45 Md. 227.

(d) Act 1815, c. 149, § 6 (see Code, art. 5, §§ 75, 76), providing that "in all appeals or writs of error depending in the Court of Appeals, the same shall not abate by death of either party if the proper person necessary to be made party shall, at the first or second term succeeding the death, appear for the purpose of prosecuting or defending the same," was intended to prevent abatements, and not increase them. Hence, it must not be construed to mean that the cause shall abate in all cases where the proper person does not fulfill the above condition, as such an interpretation is antagonistic both to the common-law rule that "writs of error never abate by the death of the defendant in error," and also the express provision of act 1806, c. 90, § 11 (Code, art. 5, § 77), providing that "in case one of the parties shall die after rule argument, the cause shall not abate."—*Carroll v. Bowie*, 7 Gill 34.

(e) Acts 1815, c. 149 (Code, art. 5, §§ 75,

76), applies to such cases as did abate by the death of the party before such acts were passed.—*Carroll v. Bowie*, 7 Gill 34.

(f) Act 1806, c. 90, § 11, and act 1815, c. 149, § 6 (Code, art. 5, §§ 75-77), should be construed together; the former providing that appellate causes shall not abate because of the death of a party after rule argument, and the latter providing that such causes shall not abate by death of a party before rule argument, if his proper representative appears to maintain the cause at the first or second term succeeding the death.—*Carroll v. Bowie*, 7 Gill 34.

(g) Upon an appeal to the December term of the Court of Appeals, 1847, errors were assigned, and a rule argument entered at the June term, 1848, the next succeeding term. The cause was set down for trial at December term, 1848, when, at the call of the cause, the counsel of the appellee appeared, and suggested the death of his client in January, 1848. *Held*, that the cause did not abate.—*Carroll v. Bowie*, 7 Gill 34.

(h) The death of plaintiff in error after errors assigned does not abate the writ.—*Carroll v. Bowie*, 7 Gill 34.

(i) If an appellant die before the commencement of the term to which the appeal is taken, it will abate.—*Hanney v. Murray*, 9 G. & J. 157. (Changed by Code, art. 5, § 76.)

(j) Independent of act 1806, c. 90, § 11 (Code, art. 5, § 77), providing that, if either of the parties in the court of appeals shall die after the cause has been put under rule argument, it shall not therefore abate, etc., a writ of error does not abate by the death of either party if the cause stood under rule argument before the death was suggested.—*Roche v. Johnson*, 2 H. & J. 37, note.

### § 334.—Continuance or revival of proceedings.

#### Cross-References.

Amendment of record by inserting order of revivor, see post, § 648.

On death of party pending review of proceedings in justices' courts, see "Justices of the Peace," § 152.

(a) Under Code, art. 75, § 25, providing that no action brought to recover damages

for injuries to the person by negligence shall abate by reason of the death of the plaintiff, but that the personal representatives of the deceased might be substituted, and art. 5, § 75, authorizing the proper party to suggest the death of either party after appeal, and to appear and prosecute or defend the same, the administrator of a plaintiff in such an action, who died after he had appealed, may be substituted to prosecute the appeal.—*Siacik v. Northern Cent. Ry. Co.*, 92 Md. 213, 48 Atl. 149.

(b) Where a party to a suit dies before appeal taken, the provisions of Code, art. 5, § 75, authorizing the making of new parties by process from the appellate court, are inapplicable, there being no appeal there pending. Article 16, § 8, governs the case, under which the court below may direct such proceedings as may appear necessary to advance the purposes of justice.—*Thomas v. Thomas*, 57 Md. 504. [*Cited and annotated* in 57 L. R. A. 603, on right to contest validity of divorce after death of one or both parties; in 1 L. R. A. (N. S.) 552, on vacating divorce decree after death of party.]

(c) Act 1806, c. 90, § 11, and act 1815, c. 149, § 6 (Code, art. 5, §§ 75-77), should be construed together; the former providing that appellate causes shall not abate because of the death of a party after rule argument, and the latter providing that such causes shall not abate by death of a party before rule argument, if his proper representative appears to maintain the cause at the first or second term succeeding the death.—*Carroll v. Bowie*, 7 Gill 34.

(d) Act 1815, c. 149, § 6 (see Code, art. 5, §§ 75, 76), providing that "in all appeals or writs of error depending in the court of appeals, the same shall not abate by death of either party if the proper person necessary to be made party shall, at the first or second term succeeding the death, appear for the purpose of prosecuting or defending the same," was intended to prevent abatements, and not increase them. Hence, it must not be construed to mean that the cause shall abate in all cases where the proper person does not fulfill the above condition, as such an interpretation is antagonistic both to

the common-law rule that "Writs of error never abate by the death of the defendant in error," and also the express provision of act 1806, c. 90, § 11 (Code, art. 5, § 77), providing that, "in case one of the parties shall die after rule argument, the cause shall not abate."—*Carroll v. Bowie*, 7 Gill 34.

(e) Acts 1815, c. 149 (Code, art. 5, §§ 75, 76), applies to such cases as did abate by the death of the party before such acts were passed.—*Carroll v. Bowie*, 7 Gill 34.

(f) Independent of act 1806, c. 90, § 11 (Code, art. 5, § 77), providing that, if either of the parties in the court of appeals shall die after the cause has been put under rule argument, it shall not therefore abate, etc., a writ of error does not abate by the death of either party if the cause stood under rule argument before the death was suggested.—*Roche v. Johnson*, 2 H. & J. 37, note.

### § 335. Designation and description.

#### *Cross-References.*

In assignment of errors, see post, § 722.  
In notice of appeal, see post, § 417.  
In petition, affidavit, or other application, see post, § 361.  
In writ of error, see post, § 400.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 336. Defects, objections, and amendment.

#### *Cross-References.*

Dismissal on court's own motion, see post, § 792.  
Time to move for dismissal, see post, § 797.  
Waiver of defects or objections by appearance, see post, § 435.  
Necessary parties in general, see ante, § 327.  
Intervention or addition of new parties, see ante, § 329.

(a) Parties in whose name an appeal was taken had no interest in the subject-matter, and those in whose behalf an attempt was made to maintain the appeal never actually took it. *Held*, that there was no proper party appellant, and that the appeal must be dismissed.—*Walter v. Second Nat. Bank*, 56 Md. 138.

(b) Where, upon a motion to dismiss for the nonjoinder of a defendant in the ap-

peal, the appellants move the court for a writ of summons and severance against the nonjoining party, the court may properly overrule the motion to dismiss, and order the writ of summons and severance.—*Mottu v. Primrose*, 23 Md. 482.

## VII. REQUISITES AND PROCEEDINGS FOR TRANSFER OF CAUSE.

### *Cross-References.*

Affirmance for failure to perfect appeal, see post, § 1126.  
 Defects in proceedings as ground for dismissal of appeal in general, see post, § 784.  
 Effect of irregular proceedings on powers of lower court, see post, § 452.  
 Presumptions as to taking and perfecting appeal or other proceeding, see post, § 987.  
 Requisites of record, see post, §§ 505-509.  
 Review of allowance in appellate court on further appeal, see post, § 1091.  
 Review of discretion of court below, see post, § 985.  
 Review of proceedings for transfer of cause, see ante, §§ 117, 127.  
 Time when jurisdiction attaches, see post, § 455.  
 Accounting of executor or administrator, see "Executors and Administrators," § 510.  
 Actions relating to wills or probate, see "Wills," § 397.  
 Actions to foreclose mortgages, see "Mortgages," § 574.  
 Allowance of claims against decedent's estate, see "Executors and Administrators," § 256.  
 Appeal from confirmation of municipal improvement assessment, see "Municipal Corporations," § 508.  
 Appeals from decisions of county board, see "Counties," § 58.  
 Appeals from justices' courts, see "Justices of the Peace," §§ 154-161.  
 Appeals from municipal courts, see "Courts," § 190.  
 Audit and allowance of claims against counties, see "Counties," § 205.  
 Bankruptcy proceedings, see "Bankruptcy," § 461.  
 Condemnation proceedings, see "Eminent Domain," § 257.  
 Criminal prosecutions, see "Criminal Law," §§ 1069-1084.  
 Drainage proceedings, see "Drains," § 36.  
 Election contests, see "Elections," § 305.  
 For review by United States Circuit Court of Appeals, see "Courts," § 405.  
 Habeas corpus proceedings, see "Habeas Corpus," § 113.  
 Highway proceedings, see "Highways," § 58.

In actions of forcible entry and detainer, see "Forcible Entry and Detainer," § 43.

In divorce suits, see "Divorce," § 181.

In mandamus proceedings, see "Mandamus," § 187.

Insolvency proceedings, see "Insolvency," § 178.

Summary proceedings to recover possession of leased premises, see "Landlord and Tenant," § 815.

Writ of review, see "Review," §§ 15-20.

### (A) TIME OF TAKING PROCEEDINGS.

#### *Cross-References.*

Amendment as to parties, see ante, § 386.  
 Amendment of notice of appeal, see post, § 422.  
 Amendment or filing of amended or supplemental abstracts, see post, § 590.  
 Application for rehearing, see post, § 833.  
 Application or filing of additional security, see post, § 391.  
 Effect of perfecting appeal during term on jurisdiction of appellate court, see post, § 454.  
 Filing additional or counter abstract of record, see post, § 585.  
 Filing additional or supplemental briefs, see post, § 763.  
 Filing assignment of errors, see post, § 744.  
 Filing brief, see post, § 765.  
 Filing notice of appeal, see post, § 428.  
 Filing supplemental transcript or return, see post, § 609.  
 Giving bond or undertaking, see post, §§ 387, 468.  
 Hearing of petition for leave to appeal, see post, § 361.  
 Issuance of citation or other process, see post, § 405.  
 Making and filing or service of proposed case or statement, see post, § 564.  
 Motion to dismiss, see post, § 797.  
 Plea in abatement for failure to take proceedings in time, see post, § 804.  
 Presumptions, see post, § 987.  
 Proceedings in forma pauperis, see post, § 389.  
 Relief from effect of failure to serve process or give notice, see post, § 430.  
 Requisites of record, see post, § 505.  
 Reservation or certification, see ante, § 314.  
 Retroactive operation of statutes, see ante, § 2.  
 Revival, see ante, § 334.  
 Service of citation or other process, see post, § 407.  
 Service of notice of appeal, see post, § 425.  
 Service of writ of error, see post, § 401.  
 Settlement of case or statement, see post, § 567.  
 Term or day to which appeal may be taken or writ made returnable, see post, § 364.  
 Transmission and filing of record, see post, §§ 621-624.

Appeals from decisions of probate courts, see "Courts," § 202; "Wills," §§ 363-367.

Appeals from justices' courts, see "Justices of the Peace," § 154.

Appeals from probate courts, see "Courts," § 202.

By infants, see "Infants," § 115.

By United States, see "United States," § 146.

Computation of time, see "Time," §§ 5, 9, 10.

Criminal prosecutions, see "Criminal Law," § 1069.

Following state statutes and practice in federal courts, see "Courts," § 356.

For review by Court of Appeals of District of Columbia, see "Courts," § 445.

For review by United States Circuit Court of Appeals, see "Courts," § 405.

For review by United States Circuit Court of Appeals of orders and decrees relating to provisional remedies, see "Courts," § 407.

Highway proceedings, see "Highways," § 58.

In actions by or against husband or wife, see "Husband and Wife," § 243.

In admiralty, see "Admiralty," § 108.

In divorce suits, see "Divorce," § 181.

In proceedings for establishment of boundaries, see "Boundaries," § 44.

Practice in federal courts, see "Courts," § 356.

### § 337. Premature appeal or other proceeding.

#### *Cross-References.*

Necessity for allowance or leave, see post, § 358.

Necessity for final decision before appeal, see ante, § 66.

Necessity for formal judgment before appeal, see ante, § 123.

Requisites of record, see post, § 505.

Pendency of motion for new trial or other proceeding to review or vacate judgment or order, see ante, § 13.

(a) An order rescinding a previous order unless cause be shown to the contrary by a day named, is interlocutory, and an appeal before the time named will be dismissed.—*L. A. Thompson Scenic Ry. Co. v. Norvell*, 44 Atl. 1026. (Not reported in Maryland Reports.)

(b) Under Code, art. 5, § 27, providing that an appeal may be allowed from "an order appointing a receiver, the answer of the party appealing being first filed," an appeal from such an order will be dismissed, if taken before answer filed.—*R. Frank Williams Co. v. United States Baking Co.*, 86 Md. 475, 38 Atl. 990.

### § 338. Nature and operation of limitations in general.

(a) Under the rule which went into effect September 1, 1883, limiting the time within which an appeal must be taken to two months from the date of the order appealed from (see Code, art. 5, § 32), an appeal from an order taken about four months after the order was passed and over two months after the rule went into effect cannot be considered; and the fact that the order was passed before the rule went into effect is immaterial.—*Stephen v. Lewis*, 62 Md. 229.

(b) The time within which an appeal may be taken from rulings made in a common law court in the trial of issues sent from an orphans' court is governed by Code, art. 5, § 6, which relates to appeals from a "court of law," and not by § 62 of the same article, which relates to appeals from orphans' courts.—*Hoppe v. Byers*, 60 Md. 381.

### § 339. Limitations applicable to particular proceedings.

#### *Cross-References.*

See ante, § 338.

Tax foreclosure proceedings, see "Taxation," § 708.

Time for appeal in proceedings for assessment of transfer tax, see "Taxation," § 900.

(a) An appeal from a judgment in attachment must be taken within nine months from the date of the judgment.—*Powhatan Steamboat Co. v. Potomac Steamboat Co.*, 36 Md. 238. (For present law, see Code, art. 5, § 6; art. 9, § 24.)

### § 340. Limitations of review of particular questions.

§ 341. (Omitted from this title in the classification used herein.)

### § 342. Separate proceeding by or against one or more co-parties.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 343. Commencement of period of limitation.

**§ 344.—Completeness or finality of decision.**

*Cross-References.*

Amendment or modification of judgment, see post, § 346.

Rendition or entry of judgment or order, see post, § 347.

(a) The lower court passed an order that certain executors, whose account was before it for settlement, should adopt as their account the account and inventory prepared for them by the auditor, and required such account to be filed within five days from the date of the order. The executors, instead of obeying this order, filed a different account, and made a different distribution. Two accounts being thus before the court, it was not certain which would be finally approved until two months after the date of the order, when the court approved the auditor's account. On the same day the executors appealed from this final order. *Held*, that the appeal was taken in due time.—*Wrightson v. Tydings*, 94 Md. 358, 51 Atl. 44.

(b) The court sent a case to an auditor to state an account distributing a fund. When the auditor stated his accounts the court rejected his reports, and referred the papers back to have a new account stated in conformity to their opinion then filed. In that opinion many claims were declared not entitled to be allowed, but the only order passed was the one referring the case back for the statement of a new account. Thereafter the auditor stated one account, D, in accordance with the views of the court, and another, E, at the instance of the creditors whose claims the court had said could not be allowed. *Held*, that the order of the court ratifying Account D, and rejecting Account E, was the order from which should be computed the time for taking an appeal.—*Davis v. Gemmell*, 73 Md. 530, 21 Atl. 712; *Gemmell v. Poe*, Id.; *Brydon v. Gemmell*, Id.; *North Branch Co. v. Same*, Id.

(c) A verdict rendered February 3, 1887, was regarded by the trial court as a verdict for plaintiff, in whose favor judgment was entered, but on writ of error the judgment was reversed, and judgment for defendant ordered, which was entered January 5, 1888. *Held*, that an appeal prayed for by plaintiff

on the last-named date was in time.—*Sentman v. Gamble*, 69 Md. 293, 13 Atl. 58, 14 Atl. 673.

(d) A bill to set aside certain deeds as being in fraud of creditors was dismissed by the court after a hearing. Over two months later complainant filed a petition to reverse the former decree and permit the taking of further testimony, or for permission to dismiss the former bill and file another. Over seven months later the petition was dismissed by the court, and complainant appealed from the decree and also from the order dismissing the petition for rehearing. *Held*, that the appeal from the decree could not be entertained since it was not taken within nine months.—*Jacobs v. Bealmear*, 41 Md. 484. (For present statutory provision, see Code, art. 5, § 32.)

(e) After a final decree in equity, the court ordered that the decree "be vacated and annulled, \* \* \* and that the defendant have leave to file his answer." *Held*, that the time during which the decree was so suspended should be deducted in computing the time within which an appeal could be taken.—*Herbert v. Rowles*, 30 Md. 271.

(f) When a decree is suspended, by order of court, at the same term at which it was passed, the time within which the right of appeal may be claimed commences after the suspending order is disposed of.—*Bennett v. Bennett*, 5 Gill 463.

**§ 345.—Effect of motion for new trial or rehearing.**

*Cross-References.*

Premature appeal, see ante, § 337.

Time for appealing from order on motion, see ante, § 339.

(a) A bill to set aside certain deeds as being in fraud of creditors was dismissed by the court after a hearing. Over two months later complainant filed a petition to reverse the former decree and permit the taking of further testimony, or for permission to dismiss the former bill and file another. Over seven months later the petition was dismissed by the court, and complainant appealed from the decree and also from the order dismissing the petition for rehearing. *Held*, that the appeal from the



decree could not be entertained since it was not taken within nine months.—*Jacobs v. Bealmear*, 41 Md. 484. (For present statutory provision, see Code, art. 5, § 32.)

§ 346.—Effect of motion to vacate or modify judgment or order.

§ 347.—Rendition or entry of judgment or order.

§ 348.—Service of notice or copy of judgment or order.

§ 349.—Effect of disability or death of party.

(a) A party, who has lost the right to bring error by the lapse of prescribed time, cannot excuse his delay on the ground that the opposing party had died and no representative had been appointed upon whom to serve the writ.—*Hopper v. Jones*, 64 Md. 578, 4 Atl. 273.

§ 350.—Fast bill of exceptions or writ of error.

§ 351.—Taking and perfecting proceeding in time.

*Cross-References.*

Amendment of notice of appeal after expiration of time, see post, § 422.

Right to supersedeas or stay, see post, § 458.

Time for delivery, filing and service of bonds or undertaking in general, see post, § 387.

Time for service of citation or other process, see post, § 407.

Time for service of notice of appeal in general, see post, § 425.

Time for service of writ of error, see post, § 407.

(a) Code, art. 5, § 6 provides that appeals from a court of law shall be taken within two months from the date of the judgment. *Held*, that where a verbal order for an appeal is given out of court and after the expiration of the term, the entry of the appeal must be made within the time limited by statute, or the appeal will be dismissed.—*Humphreys v. Slemons*, 78 Md. 606, 28 Atl. 1101; *Gaines v. Lamkin*, 82 Md. 129, 33 Atl. 459.

(b) The filing of an appeal bond, reciting that an appeal had been prayed, does not avoid the necessity of an entry and order of appeal under Code, art. 5, § 32, requiring appeals in equity to be "taken and entered" within two months from date of the decree.—*Humphreys v. Slemons*, 78 Md. 606, 28 Atl. 1101.

(c) An oral order for an appeal in equity, given to the clerk, but not actually entered by him, is ineffectual, under Court of Appeals rule 27 (Code, art. 5, § 32), requiring appeals in equity to be "taken and entered" within two months from date of the decree.—*Miller v. Murray*, 71 Md. 61, 17 Atl. 939.

(d) The day on which the judgment was rendered must be excluded in estimating the time allowed for an appeal or writ of error.—*Calvert v. Williams*, 34 Md. 672. [*Cited and annotated in 49 L. R. A. 227, on first and last days in computing time.*]

§ 352.—Extension of time.

§ 353.—Judicial authority.

§ 354.—Consent of parties.

§ 355.—Waiver of objections to delay.

§ 356.—Effect of delay or failure to take proceedings.

*Cross-References.*

Abandonment of appeal, see post, § 805.  
Striking cause from docket, see post, § 813.

Time to move for dismissal, see post, § 797.

(a) An appeal, not being taken within two months from the date of the judgment, as required by Code, art. 5, § 6 (rules 2, 27), will be dismissed.—*Riley v. New York, P. & N. R. Co.*, 90 Md. 53, 44 Atl. 994.

(b) An appeal or writ of error not taken within the time prescribed by law will be dismissed.—*Dorsey v. Dorsey*, 4 H. & J. 215; *Andrews v. Bosley*, 6 H. & J. 99; *Sewell v. Sewell*, 1 H. & G. 9; *Wheeler v. Stone*, 4 Gill 38; *Powhatan Steamboat Co. v. Potomac Steamboat Co.*, 36 Md. 238; *Walsh v. State*, 53 Md. 539; *Peabody Heights Co. v. Sadtler*, 62 Md. 145; *Hopper v. Jones*, 64 Md. 578, 4 Atl. 273.

§ 357.—Relief in case of failure to proceed in time.

*Cross-References.*

Amendment of bond or undertaking after time, see post, § 390.

Filing new bond after time, see post, § 391.

Review of discretion of court, see post, § 956.

(a) An appeal will not be dismissed because the order therefor was entered in the record more than two months after the entry of the judgment, where appellant's attorney signed an order to enter the appeal

and left it in the clerk's office within two months after the date of the judgment, but on account of the removal of the clerk's office about that time it was misplaced.—*Cahill v. City of Baltimore*, 93 Md. 233, 48 Atl. 705.

(b) Although the time allowed for an appeal has passed, where affidavit is made that the orders appealed from were obtained by fraud, and that appellant did not discover such fraud until within two months of the date of the appeal, the Court of Appeals will entertain the appeal.—*United Lines Tel. Co. v. Stevens*, 67 Md. 156, 8 Atl. 908.

(c) An anticipated or expected agreement with counsel for the adverse party concerning the contents of a transcript of the record on appeal does not excuse a delay in taking the appeal beyond the time fixed by law therefor.—*Ewell v. Taylor*, 45 Md. 573.

(d) Notwithstanding the lapse of time ordinarily prescribed by law for the prosecution of appeals from a court of equity, a petition praying to be permitted to appeal, which was supported by affidavit alleging that the decree was obtained by mistake, and was not discovered by the parties until the day before the filing of the petition, will be allowed.—*Johnson v. Robertson*, 31 Md. 485.

(e) An appeal taken under act 1826, c. 200, on the ground that a decree was obtained by mistake, is not unreasonably delayed if taken within six months after the discovery of the mistake.—*Oliver v. Palmer*, 11 G. & J. 137. (For present statutory provision see Code, art. 5, § 32.)

(f) The mistake which will authorize an appeal from a decree or order in chancery after the lapse of the statutory period is not mere laches, but a result of an act of the other party or an error of the chancellor.—*Contee v. Pratt*, 9 Md. 67.

(g) The affidavit required under act 1826, c. 200, providing that appeals shall be prosecuted within nine months from the rendition of the decree, unless it is alleged on oath that the decree was obtained by fraud or mistake, may be made by any person having knowledge of the subject.—*Oliver v. Palmer*,

11 G. & J. 137. (For present statutory provision see Code, art. 5, § 32.)

(h) Under act 1826, c. 200, which provides that an appeal from decrees in chancery shall be prosecuted within nine months from the time of making such decree, "unless it shall be alleged, on oath or affirmation, that such decree was obtained by fraud or mistake," a general affidavit that the decree was obtained by mistake is sufficient, without any specification of the mistake alleged.—*Oliver v. Palmer*, 11 G. & J. 137. (For present statutory provision see Code, art. 5, § 32.)

#### (B) PETITION OR PRAYER, ALLOWANCE, AND CERTIFICATE OR AFFIDAVIT.

##### *Cross-References.*

Allowance of further appeal after remand to lower court, see post, § 1220.

Presumptions, see post, § 937.

Requisites of record, see post, §§ 506, 507.

Allowance of appeal to United States Circuit Court of Appeals, see "Courts," § 405.

Amendment of judgment to show allowance, see "Judgment," § 315.

Appeals from justices' courts, see "Justices of the Peace," §§ 156, 157.

Appeals from municipal courts, see "Courts," § 190.

Criminal prosecutions, see "Criminal Law," §§ 1071-1074.

Highway proceedings, see "Highways," § 58.

In admiralty, see "Admiralty," § 110.

Mandamus to compel allowance, see "Mandamus," § 57.

Probate proceedings, see "Wills," § 365.

#### § 358. Necessity of allowance or leave.

##### *Cross-Reference.*

Requisites of record, see post, § 507.

(a) An appeal, being a matter of right, is properly before the appellate court when it has been demanded, and the proper transcript has been transmitted, though the lower court refused to grant the appeal.—*Thompson v. McKim*, 6 H. & J. 302.

#### § 359. Authority of court or judge.

#### § 360. Prayer and allowance in open court.

##### *Cross-References.*

Necessity for process or notice, see post, § 397.

Review of decisions, see post, § 960.

(a) A prayer for an appeal made to a judge of the circuit court in his private

office, away from the courthouse, after the jury had been finally discharged for the term, in the absence of the clerk, without the court or clerk's docket being before him, is not made in open court.—*Hays v. Philadelphia, W. & B. R. Co.* 99 Md. 413, 58 Atl. 439.

(b) A verbal order by a judge of the circuit court made in his private office, away from the courthouse, after the jury had been finally discharged for the term, in the absence of the clerk, and without the court or clerk's docket being before him, in handing the papers in a cause to an attorney therein, authorizing him to deliver them to the clerk, and to direct the clerk to enter on the docket, "The motion for a new trial overruled, judgment for the defendant, and an appeal by the plaintiff," is a nullity, and hence an appeal cannot be predicated thereon.—*Hays v. Philadelphia, W. & B. R. Co.*, 99 Md. 413, 58 Atl. 439.

**§ 361. Petition, affidavit, or other application.**

*Cross-References.*

Affidavit of merits and good faith, see post, § 367.

Rehearing, see post, § 830.

(a) An appeal from an order striking out a judgment of fiat, in scire facias proceedings to revive a prior judgment, taken merely by an order to the clerk to "enter an appeal in this case," was unsustainable, as not taken by formal exception or by petition addressed to the court, designating the points or questions of law by which the party feels himself aggrieved.—*Palmenberg v. Turk*, 116 Md. 8, 81 Atl. 221.

(b) Where, in a suit to foreclose a second mortgage, the trustee named in the first mortgage intervenes, his order to the clerk to enter an appeal is sufficient, though it does not show on its face that he appealed as a trustee representing the first mortgage bondholders.—*Tome v. King*, 64 Md. 166, 21 Atl. 279; *Hambleton v. Same*, *Ibid*.

**§ 362. Specification of errors.**

*Cross-References.*

In assignments of errors, see post, §§ 724-734.

In briefs, see post, § 758.

In notice of appeal, see post, § 421.

(a) The petition, under rule 1 of the Court of Appeals (Code, art. 5, § 4), passed in pursuance of Const. 1867, art. 4, § 18, takes the place of the former writ of error, and in it the party making the application must plainly designate the points of law, by the decision of which he feels aggrieved, and no point not thus designated can be heard in that court.—*Hearn v. Gould*, 51 Md. 319.

**§ 363. Grounds for allowance or refusal.**

**§ 364. Term or day to which appeal may be taken or writ made returnable.**

**§ 365. Order for appeal or writ or error.**

**§ 366. Certificate as to grounds.**

**§ 367. Affidavit of merits and good faith.**

*Cross-References.*

Necessity of showing in record, see post, § 581.

Review of decision, see post, § 960.

**§ 368. Stipulation for judgment absolute on appeal from order granting new trial.**

**(C) PAYMENT OF FEES OR COSTS, AND BONDS OR OTHER SECURITIES.**

*Cross-References.*

Liabilities on bonds and undertakings, see post, §§ 1223-1247.

Presumptions, see post, § 937.

Requisites of record, see post, § 508.

Security for supersedeas, or stay of proceedings, see post, §§ 463-475.

Voluntary dismissal for defects in bond, see post, § 776.

Appeals from justices' courts, see "Justices of the Peace," §§ 153, 159.

Appeals from probate court, see "Courts," § 202; "Wills," § 366.

Criminal prosecutions, see "Criminal Law," §§ 1075-1077.

Election contests, see "Elections," § 305.

Following state statutes and practice in federal courts, see "Courts," § 356.

Highway proceedings, see "Highways," § 58.

In admiralty, see "Admiralty," § 111.

Mandamus to compel fixing amount and approval of bond, see "Mandamus," § 57.

Practice in federal courts, see "Courts," § 356.

Proceedings for removal of administrator, see "Executors and Administrators," § 35.

Stamp tax on bond, see "Internal Revenue," § 19.

**§ 369. Payment of costs in lower court.***Cross-References.*

Mandamus to compel clerk to furnish bill of costs, see "Mandamus," § 57.

Payment of costs of arbitration, see "Arbitration and Award," § 73.

(a) The right of appeal from an order overruling a demurrer to a bill does not depend upon the payment of the \$10 and costs which Code, art. 16, § 163, requires to be paid to the opposite party by a party whose demurrer is overruled, and nonpayment thereof is not ground for dismissing the appeal.—*Stinson v. Ellicott City & Clarksville Co.*, 109 Md. 111, 71 Atl. 527.

**§ 370. Payment of fees on appealing.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 371. Payment of costs or fees for transcript or return.**

(a) The clerk of the trial court in a suit in equity need not forward the record to the Court of Appeals until it is paid for, and the clerk need not demand payment from appellant.—*Wilmer v. City of Baltimore*, 116 Md. 338, 81 Atl. 685.

(b) Failure of appellant or his counsel to pay the cost of printing the transcript of the record within 10 days after notice from the clerk of the amount thereof, as required by rule 34 (Code, art. 16, § 163), does not authorize dismissal of the appeal.—*German Union Fire Ins. Co. of Baltimore v. Cohen*, 114 Md. 130, 78 Atl. 911.

(c) Appellant's failure to pay or secure to be paid to the clerk the cost of printing the appellate record, as required by court rule 34 (Code, art. 16, § 163), does not justify dismissal.—*Jacobs v. Disharoon*, 113 Md. 92, 77 Atl. 258.

(d) On appeal or error the clerk of the trial court has no right to withhold the record or transcript until the fees for the same are paid or secured.—*Bowie v. Maryland Agricultural College*, 27 Md. 268. (For present statutory provisions, see Code, art. 5, §§ 49, *et seq.*)

**§ 372. Necessity of security to perfect appeal or other proceeding.***Cross-References.*

Effect of failure to give security, see post, § 395.

Liabilities on unnecessary bond or undertaking, see post, § 1224.

On allowance of appeal in open court, see ante, § 360.

Review of discretion of lower court, see post, § 985.

Action against heirs and distributees, see "Descent and Distribution," § 151.

Action by or against trustee in bankruptcy, see "Bankruptcy," § 306.

Appeal from decision of board of review of tax assessments, see "Taxation," § 493.

As assignee in bankruptcy, see "Bankruptcy," § 306.

Computation of time, see "Time," § 9.

On appeal from issuance of license, see "Intoxicating Liquors," § 75.

On appeal to United States Circuit Court of Appeals, see "Courts," § 405.

Security for costs, see "Costs," § 246.

**§ 373.—In general.***Annotation.*

Security on error or appeal to Federal Supreme Court.—66 L. R. A. 858, note.

For statutory provisions see Code, art. 5, §§ 53, *et seq.*

(a) An appeal from an order of the orphans' court will not be dismissed for want of an appeal bond.—*Biddison v. Mosely*, 57 Md. 89.

(b) An appeal bond or undertaking is not necessary to the perfection of an appeal.—*In re Ringgold*, 1 Bland 5; *McKim v. Thompson*, *Ibid.* 150; *Price v. Thomas*, 4 Md. 514.

**§ 374.—Exemptions.****§ 375. Parties by and to whom security to be given.****§ 376.—Obligees.****§ 377.—Obligors.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 378. Sureties.***Cross-References.*

Additional or new security, see post, § 391.

Recitals in bond, see post, § 384.

**§ 379.—Necessity and number.**

(a) Where the statute requires an appeal bond with "sureties" or "securities," a bond with a single surety is insufficient.—*Harris v. Register*, 70 Md. 109, 16 Atl. 386.

**§ 380.—Competency.***Cross-References.*

Attorneys, see "Attorney and Client," § 17.

Married woman as surety, see "Husband and Wife," § 87.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 381.—Sufficiency and justification.***Cross-Reference.*

Mandamus to compel acceptance of sureties on appeal bond, see "Mandamus," § 57.

(a) The only question, in cases where an appeal bond is objected to, is to ascertain whether the party who is successful in the inferior court has, in the sureties in the bond, a secure indemnity for the injury which he may sustain by the appeal, and whether this appears by looking to the value of each surety or by an aggregation of the worth of all is not material. If the sureties in the bond, taken collectively, are sufficient, the bond is sufficient, and must be approved.—*Barnum v. Raborg*, 2 Md. Ch. 516.

(b) It has never been the practice of the high court of chancery to require the sureties in an appeal bond, when excepted to, to justify, in order to ascertain their sufficiency, in analogy to the practice at law, in the case of bail.—*Barnum v. Raborg*, 2 Md. Ch. 516.

**§ 382. Amount or penalty of bond or undertaking.***Cross-Reference.*

Additional or new security, see post, § 391.

*Annotation.*

For statutory provisions, see Code, art. 5, §§ 53, *et seq.*

(a) On appeal from a decree for the payment of a sum of money, the rule is to require the appellant to give a bond in double the amount of the decree and costs.—*In re Ringgold*, 1 Bland 5.

(b) In cases of appeal from a decree of foreclosure and specific performance, the bond should be only in a sum sufficient to cover the costs and mesne profits of the land in question.—*In re Ringgold*, 1 Bland 5.

**§ 383. Conditions of bond or undertaking.***Cross-References.*

Additional or new security, see post, § 391.

Breach or fulfillment of conditions, see post, §§ 1229-1232.

**§ 384. Form and contents of bond or undertaking.***Cross-Reference.*

Liabilities on insufficient, informal, or defective bond or undertaking, see post, § 1225.

**§ 385. Execution of bond or undertaking.***Cross-Reference.*

Premature execution, see post, § 387.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 386. Approval of bond or undertaking.***Cross-References.*

Amendment of order in appellate court, see post, § 886.

Computation of time, see "Time," § 10.

On holiday, see "Holidays," § 5.

(a) A deputy clerk can lawfully approve an appeal bond.—*Harris v. Regester*, 70 Md. 109, 16 Atl. 386. [*Cited and annotated in 42 L. R. A. (N. S.) 885, as to in whose name deputy officers should act.*]

(b) An appeal bond speaks from the time of its filing and approval, and not from the day of its date; and the fact that an appeal was taken on the 10th of September, and that on such day a bond was approved, renders the bond sufficient, though it was dated the 13th of August.—*Jenkins v. Hay*, 28 Md. 547.

(c) The appeal bond, on appeal from the decree of the chancellor, is to be approved by him, and if the responsibility of the obligors be known to him, he acts upon his own knowledge; if not, their sufficiency must be certified to by some other judge, justice, or solicitor, in which case he approves the bond without notice to the other party.—*In re Ringgold*, 1 Bland 5.

**§ 387. Delivery or filing and service of bond or undertaking.***Cross-References.*

See ante, § 386.

Necessity of filing within time limited for taking appeal, see ante, § 351.  
Computation of time, see "Time," §§ 9, 10.

(a) Under the insolvent laws, the time for filing the appeal bond is not limited, the limitation of 30 days applying only to the taking of the appeal.—*Willis v. Wright*, 22 Md. 378. (See Code, art. 47, § 31.)

### § 388. Deposit as security.

#### *Cross-Reference.*

On appeal from justice's court, see "Justices of the Peace," § 159.

### § 389. Proceeding in forma pauperis.

#### *Cross-References.*

Pauper's oath to obtain remand of cause without payment of costs and fees, see post, § 1189.

Right of person suing in forma pauperis to transcript without prepayment of fees, see ante, § 371.

Application of proceedings in forma pauperis to United States Circuit Court of Appeals, see "Courts," § 405.

False affidavit, see "Perjury," § 12.

Liability for costs as affected by appeal in forma pauperis, see "Costs," § 246½.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 390. Amendment of bond or undertaking.

### § 391. Additional or new security.

#### *Cross-References.*

Necessity of notice of appeal, see post, § 396.

On review of two or more decisions, see post, § 394.

Reinstatement on filing new bond, see post, § 807.

Taking new appeal on failure of sureties to justify, see ante, § 14.

Dismissal on court's own motion, see post, § 792.

### § 392. Waiver of security or of defects.

### § 393. Use of supersedeas bond as appeal bond.

#### *Cross-References.*

Appeal or cost bond as supersedeas, see post, § 461.

In election contest, see "Elections," § 305.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 394. Bond or undertaking on review of two or more decisions.

#### *Cross-References.*

Additional or new security, see ante, § 391.

Amendment of bond or undertaking, see ante, § 390.

Extension of time and relief in case of failure to file in time, see ante, § 387.

Right to assign errors, see post, § 720.

Showing as to grounds for dismissal, see post, § 795.

Striking off appeal, see post, § 813.

Time to move for dismissal, see post, § 797.

### § 395. Effect of failure to give or defects in security.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### (D) WRIT OR ERROR, CITATION, OR NOTICE.

#### *Cross-References.*

Joinder of proceedings, see ante, § 15.

Necessity of perfecting proceedings within time limited for taking appeal, see ante, § 351.

Notice of settlement of case or statement, see post, § 568.

Presumptions, see post, § 937.

Requisites of record, see post, § 509.

Sufficiency of abstract of record as showing notice of appeal, see post, § 586.

Criminal prosecutions, see "Criminal Law," §§ 1079-1081.

Highway proceedings, see "Highways," § 58.

In actions by or against husband or wife, see "Husband and Wife," § 243.

In admiralty, see "Admiralty," § 112.

Notice of appeal from action of board of town auditors in allowing or rejecting claims, see "Towns," § 62.

Notice of appeal from justice's court, see "Justices of the Peace," § 160.

On appeal from decisions of municipal courts, see "Courts," § 190.

Probate proceedings, see "Wills," § 367.

Writ of error from United States Supreme Court to state court, see "Courts," § 397.

Writ of error from United States Supreme Court to state court as part of record for purpose of showing federal question, see "Courts," § 398.

### § 396. Necessity of appellate process or of notice.

#### *Cross-References.*

Effect of failure to serve process or give notice, see post, § 430.

Waiver of process or notice, see post, § 429.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 397. Process or notice on appeal in open court.

#### *Cross-Reference.*

Prayer and allowance in open court, see ante, § 360.

(a) In administration proceedings in the orphans' court a claim was disallowed. There was neither petition nor answer. The trial was summarily had, on oral testimony, without formal statement of the grounds of objection to the claim. *Held*, that the proceeding was a summary, not a plenary, one, and therefore was within Code, art. 5, § 61, providing that no appeal shall be allowed from summary proceedings unless appellant shall give notice of appeal, and request that the testimony be reduced to writing.—*Bowling v. Estep*, 56 Md. 564.

(b) Where the evidence taken in a summary proceeding is reduced to writing by order of court at the time taken, it is not necessary to give notice of appeal, and request the testimony to be reduced to writing, as is provided by Code, art. 5, § 40.—*Gephart v. Strong*, 20 Md. 522.

### § 398. Writ of error.

#### *Cross-Reference.*

For review by United States Circuit Court of Appeals, see "Courts," § 405.

#### *Annotation.*

Practice and procedure governing the transfer of causes to the Federal Supreme Court on writ of error or appeal.—66 L. R. A. 833, note.

### § 399.— Issuance.

### § 400.— Form and requisites.

### § 401.— Service.

#### *Cross-Reference.*

Requisites of record, see post, § 506.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 402.— Return.

#### *Cross-References.*

Term or day to which returnable, see ante, § 364.

For review by United States Circuit Court of Appeals, see "Courts," § 405.

(a) A transcript of the record, certified under the hand of the clerk and seal of the court, with the writ of error annexed, is a legal and sufficient return of such writ.—*State v. Buchanan*, 5 H. & J. 317, 9 Am. Dec. 534. [*Cited and annotated in 19 L. R. A. 345, on state's right to appeal in criminal case.*]

### § 403.— Defects, objections, and amendments.

#### *Cross-Reference.*

Amendment as to parties, see ante, § 336.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 404. Citation or other process.

#### *Cross-References.*

Necessity for appellate process, see ante, §§ 396, 397.

Withdrawal of citation as abandonment of appeal, see post, § 305.

### § 405.— Issuance.

### § 406.— Form and requisites.

### § 407.— Service.

### § 408.— Return.

### § 409.— Defects, objections, and amendments.

#### *Cross-References.*

Striking cause from docket, see post, § 813.

Waiver of defects, see post, § 429.

### § 410. Scire facias to hear errors.

### § 411. Nature and method of notice in general.

### § 412. Authority to give notice.

### §§ 413, 414, 415. Parties entitled to notice.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 416. Form and requisites of notice.

### § 417.— Sufficiency in general.

(a) Where, prior to the trial of a replevin suit, it was entered to the use of a certain firm who executed the replevin bond, the fact that the attorneys signed the notice of appeal as attorneys for plaintiff instead of attorneys for plaintiffs will be regarded as a mere clerical error.—*Anderson v. Stewart*, 108 Md. 340, 70 Atl. 228.

### § 418.— Decisions and proceedings included.

### § 419.— Descriptions of judgments or orders.

### § 420.— Specification of interlocutory or intermediate judgments or orders.

#### *Cross-Reference.*

Review of interlocutory or intermediate orders included in appeal, see post, § 871.

**§ 421.—Specification of errors.****Cross-References.**

In application for allowance of appeal, see ante, § 362.

In assignment of errors, see post, §§ 724-734.

In briefs, see post, § 758.

**§ 422.—Defects, objections, and amendments.****Cross-Reference.**

Waiver of defects, see post, § 429.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§§ 423, 424, 425, 426, 427. Service of notice.****Cross-References.**

Service of citation or other process, see ante, § 407.

Service of writ of error, see ante, § 401. In actions by or against infants, see "Infants," § 115.

In actions by or against insane persons, see "Insane Persons," § 102.

Necessity of service within time limit for taking appeal, see ante, § 351.

Computation of time, see "Time," § 9.

On appeal from municipal courts, see "Courts," § 190.

Acknowledgment of service as constituting stipulation as to entry of judgment, see "Stipulations," § 8.

Persons entitled to notice, see ante, §§ 418, 415.

**§ 428. Filing notice and proof of service.****Cross-References.**

Filing notice and undertaking, see ante, § 887.

Necessity of filing within time limited for taking appeal, see ante, § 351.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 429. Waiver of process or notice or of defects therein.****Cross-Reference.**

Effect of appearance, see post, § 435.

**§ 430. Effect of failure to serve process or to give notice.****Cross-References.**

Failure to serve in time, see ante, § 425.

Time to move for dismissal, see post, § 797.

On appeal to United States Circuit Court of Appeals, see "Courts," § 405.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**(E) ENTRY, DOCKETING, AND APPEARANCE.****Cross-References.**

Docketing in trial court after remand, see post, § 1203.

Making and keeping dockets and calendars, see post, § 808.

Appeals from justices' courts, see "Justices of the Peace," § 161.

Criminal prosecutions, see "Criminal Law," § 1082.

**§ 431. Necessity of entering or docketing cause.****§ 432. Time for entry or docketing.****Cross-References.**

Term or day to which appeal may be taken or writ made returnable, see ante, § 364.

Time for hearing, see post, § 817.

Time to move for dismissal for failure to docket in time, see post, § 797.

Waiver of delay in docketing, see post, § 791.

**§ 433. Sufficiency of entry.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 434. Necessity and requisites of appearance.****Cross-References.**

Appearance as part of record, see post, § 517.

Setting aside affirmance for failure to appear, see post, § 832.

Want of notice of argument as ground for relief from judgment for failure to appear, see post, § 814.

(a) On a record being filed in the appellate court under a writ of error, the court may, if it be the regular term for judgment, and no counsel appear for the plaintiff in error, dismiss the writ.—*Bourne v. Mackall*, 1 H. & G. 86.

**§ 435. Effect of appearance.****Cross-Reference.**

Waiver of defects in appeal bond, see ante, § 392.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**VIII. EFFECT OF TRANSFER OF CAUSE OR PROCEEDINGS THEREFOR.****Cross-References.**

Action deemed as pending until determination of appeal, see "Action," § 71.

Actions relating to wills or probate, see "Wills," § 398.



Actions to foreclose mortgages, see "Mortgages," § 575.  
 Admiralty, see "Admiralty," § 113.  
 Appeal from decision of county board, see "Counties," § 58.  
 Appeals from justices' courts, see "Justices of the Peace," § 162.  
 As affecting limitations, see "Limitation of Actions," § 106.  
 As *lis pendens*, see "*Lis Pendens*," § 11.  
 Bankruptcy proceedings, see "Bankruptcy," § 462.  
 Condemnation proceedings, see "Eminent Domain," § 258.  
 Criminal prosecutions, see "Criminal Law," § 1083.  
 Effect of appeal on right to use judgment as set-off, see "Judgment," § 883.  
 On right to remove cause to federal court, see "Removal of Causes," § 15.  
 Possession to maintain trespass pending appeal from judgment of ouster, see "Trespass," § 20.  
 Powers of executor pending appeal in proceedings for contest of will, see "Executors and Administrators," § 78.  
 Probate proceedings, see "Wills," § 868.  
 Proceedings for sale of real estate of decedent, see "Executors and Administrators," § 358.

#### (A) POWERS AND PROCEEDINGS OF LOWER COURT.

##### *Cross-References.*

Additional or new security, see post, § 475.  
 After remand by an intermediate court pending application to higher court for writ of error, see post, § 1197.  
 Allowance of supersedeas or stay of proceedings, see post, § 477.  
 Power to order dismissal, see post, § 778.  
 Power to strike off cause, see post, § 813.  
 Proceedings on remand of cause from appellate court, see post, §§ 1186-1216.  
 Scope and effect of supersedeas or stay, see post, § 485.  
 Further proceedings in accounting of trustee pending appeal, see "Trusts," § 329.  
 In divorce suits, see "Divorce," § 182.  
 Proceedings for appointment of administrator, see "Executors and Administrators," § 20.  
 Revocation of appointment of administrator, see "Executors and Administrators," § 32.

#### § 436. Transfer of jurisdiction in general.

##### *Annotation.*

Further proceedings pending error or appeal to Federal Supreme Court.—66 L. R. A. 862, note.

(a) After an appeal no order can be passed in the case which, in any contingency, can possibly prejudice the appellant.—*Ohio Life Insurance and Trust Co. v. Winn*, 4 Md. Ch. 253; *Hall v. Jack*, 32 Md. 253.

#### § 437. Force and effect of judgment or order appealed from.

##### *Cross-References.*

Proceedings for review by one or more co-parties, see post, § 451.  
 Proceedings for review of part of judgment or order, see post, § 450.  
 Of judgment in justice's court, see "Justices of the Peace," § 162.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 438. New trial or rehearing.

##### *Cross-References.*

As ground for dismissing appeal, see post, § 790.  
 Effect of grant of new trial, see post, § 457.  
 Filing application as ground for advancing cause on appellate calendar, see post, § 811.

#### § 439. Opening or vacating judgment or order.

##### *Cross-Reference.*

Ground for dismissing appeal, see post, § 790.

(a) The trial court has no power to strike out the judgment on a motion made after it was enrolled, within Balto. City Code, § 317. (Code Pub. Local Laws, art. 4, § 171), after an appeal had been taken, a bond given, the affidavit made to stay execution, and the transcript of the record transmitted to and received by the appellate court, although the motion was founded on surprise, deceit, and fraud.—*United Railways & Electric Co. of Baltimore v. Corbin*, 109 Md. 52, 71 Atl. 131.

#### § 440. Amendment of proceedings.

##### *Cross-References.*

Affirmance of amended judgment, see post, § 1126.  
 Amendment in appellate court, see post, §§ 886-889, 896.  
 Effect of subsequent proceedings in lower court, see post, § 457.

##### *Annotation.*

Power of trial court to correct its record after an appeal or writ of error.—31 L. R. A. (N. S.) 207, note.

(a) A petition to file an ancillary bill, made after an appeal from a decree dismissing the original bill, is properly denied.—*Chappell Chemical & Fertilizer Co. v.*

Sulphur Mines Co. of Virginia, 85 Md. 681, 36 Atl. 121.

#### § 441. Perfecting and transmission of record.

##### *Cross-References.*

- Amendment of record of trial court, see ante, § 440.
- Amendment or correction, see post, §§ 648-651.
- Loss of record, see post, § 543.
- Unauthorized alteration of case or statement, see post, § 577.
- Withdrawal of record from files of appellate court, see post, § 630.
- Amendment of bill of exceptions before transmission of record, see "Exceptions, Bill of," § 59.

#### § 442. Collateral actions or proceedings.

##### *Cross-References.*

- In proceedings for accounting by trustee, see "Trusts," § 329.
- In proceedings for establishment or enforcement of trust, see "Trusts," § 376.
- Power to control insolvency proceedings pending appeal from order removing syndic or assignee, see "Insolvency," § 50.
- Right of administrator to maintain suit to recover possession of land fraudulently conveyed by intestate pending appeal from order of sale, see "Executors and Administrators," § 358.

(a) An appeal does not necessarily stay all further proceedings in the cause, in reference to rights not passed upon or affected by the decree or order appealed from, but only the execution or operation of such order or decree.—*Barnum v. Barnum*, 42 Md. 251.

#### § 443. Property in controversy.

#### § 444. Provisional remedies.

#### § 445.—In general.

#### § 446.—Attachment and garnishment.

##### *Cross-References.*

- Effect of supersedeas or stay, see post, § 487.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 447.—Injunction.

(a) Pending an appeal from an interlocutory order in the Court of Appeals, dissolving an injunction made on bill and answer alone, the high court of chancery may grant another injunction, in the na-

ture of an amended bill between the same parties, to be issued after such dismissal or termination of the appeal.—*McKim v. Odom*, 8 Bland 407. [*Cited and annotated in 4 L. R. A. (N. S.) 1003, on punishment of corporation for contempt.*]

#### § 448.—Receiver.

##### *Cross-References.*

- Effect of supersedeas or stay, see post, § 488.
- Power of appellate court to issue, see post, § 456.

(a) The court of chancery will enforce its order of removal by attachment, although a receiver has entered an appeal from the order discharging him, and filed an approved appeal bond.—*In re Colvin*, 3 Md. Ch. 278. [*Cited and annotated in 38 L. R. A. (N. S.) 281, on jurisdiction of equity when the only relief sought is an injunction or receiver to preserve status quo, pending action or proceedings before other tribunal.*]

#### § 449. Interlocutory appeals.

(a) During the pendency of an appeal from an order passed after judgment by default, refusing to remove a case, the court can extend the judgment, and issue execution thereon.—*Rice v. West*, 42 Md. 614.

#### § 450. Proceedings for review of part of judgment or order.

#### § 451. Proceedings for review by one or more co-parties.

(a) Pendency of an appeal from a decree which reserves for future adjudication all questions in respect to the claim of one of the parties does not preclude such party from taking testimony under a commission issued before the entry of the decree.—*Barnum v. Barnum*, 42 Md. 251.

#### § 452. Irregular or ineffectual proceedings for review.

##### *Cross-References.*

- Authority to make order declaring proceedings abandoned, see post, § 806.
- Effect of dismissal of appeal, see post, § 803.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 453. (Omitted from the classification used herein.)

**(B) JURISDICTION ACQUIRED BY APPELLATE COURT.**

**Cross-References.**

Effect of dismissal of appeal, see post, § 803.  
 Jurisdiction after remand to lower court, see post, §§ 1217-1222.  
 Power to order dismissal, see post, § 778.  
 Habeas corpus proceedings, see "Habeas Corpus," § 113.  
 In divorce suits, see "Divorce," § 182.  
 On appeal from order removing executor, see "Executors and Administrators," § 35.

**§ 454. Effect of taking appeal or other proceeding.**

**§ 455. Time when jurisdiction attaches.**

**Cross-Reference.**

Retroactive operation of statute, see ante, § 2.

**§ 456. Extent of jurisdiction.**

**Cross-References.**

Allowance of supersedeas or stay of proceedings, see post, § 477.  
 Amendment or correction of record, see post, § 653.

**§ 457. Effect of subsequent proceedings in court below.**

**Cross-Reference.**

Subsequent proceedings as ground for dismissal, see post, § 790.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**IX. SUPERSEDEAS OR STAY OF PROCEEDINGS.**

**Cross-References.**

Liabilities on bonds and undertakings, see post, §§ 1223-1247.  
 Petition for rehearing operating as supersedeas, see post, § 833.  
 Review of discretion of lower court, see post, § 986.  
 Supersedeas bond as appeal bond, see ante, § 393.  
 Action on adverse claim to mining location, see "Mines and Minerals," § 38.  
 Actions to foreclose mortgages, see "Mortgages," § 575.  
 Appeal from allowance to widow and children, see "Executors and Administrators," § 193.  
 Appeal from judgment against decedent's estate, see "Executors and Administrators," § 455.  
 Appeal from order revoking letters of administration, see "Executors and Administrators," § 32.  
 Appeals from justices' courts, see "Justices of the Peace," § 163.

Bond affecting force of action as *lis pendens*, see "Lis Pendens," § 11.

Criminal prosecutions, see "Criminal Law," § 1084.

Discharge of sureties on attachment bonds by giving of supersedeas bond, see "Attachment," § 337.

Effect of appeal from issuance of license, see "Intoxicating Liquors," § 75.

Effect of supersedeas in quo warranto proceedings, see "Quo Warranto," § 62.

Election contests, see "Elections," § 305.

Failure to give bond as affecting right to injunction to stay proceedings on judgment, see "Judgment," § 407.

Habeas corpus proceedings, see "Habeas Corpus," § 113.

In actions of forcible entry and detainer, see "Forcible Entry and Detainer," § 45.

In divorce suits, see "Divorce," § 182.

Injunction against execution when supersedeas is refused, see "Execution," § 171.

In mandamus proceedings, see "Mandamus," § 187.

In marine courts, see "Courts," § 176½.

In municipal courts, see "Courts," § 190.

In proceedings to revoke liquor license, see "Intoxicating Liquors," § 108.

On appeal from order for election, see "Elections," § 45.

On review by United States Circuit Court of Appeals of orders or decrees relating to provisional remedies, see "Courts," § 407.

Probate proceedings, see "Wills," § 368.

Reformation, see "Reformation of Instruments," § 6.

Rules of court as to stay of proceedings, see "Courts," § 80.

Suspension or stay of proceedings on review by United States Circuit Court of Appeals, see "Courts," § 405.

Undertaking on appeal as satisfying statute of frauds, see "Frauds, Statute of," § 108.

**§ 458. Right to supersedeas or stay in general.**

**Cross-Reference.**

Grounds for allowance or refusal by court, see post, § 479.

(a) Whether execution upon an equity decree shall be stayed pending appeal is in the sound discretion of the court.—*Williams v. Savage Mfg. Co.*, 1 Md. Ch. 306. (For present statutory provision, see Code, art. 5, § 29.)

**§ 459. Taking and perfecting appeal or other proceeding for review as condition.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 460. Operation of appeal or writ of error and necessity for security or allowance.**

*Cross-References.*

Appointment and proceedings of receiver, see post, § 489.

Effect as staying injunction, see post, § 488.

Liabilities on unnecessary bond or undertaking, see post, § 1224.

Proceedings in forma pauperis, see post, § 478.

Security as condition to allowance of supersedeas, see post, § 480.

To transfer jurisdiction, see ante, § 455.

In divorce suits, see "Divorce," § 182.

(a) An appeal from an order of sale of mortgaged property would not affect the rights of the purchaser, where appellant gave no appeal bond and did not procure a stay.—*Middendorf v. Baltimore Refrigerating & Heating Co. of Baltimore City*, 117 Md. 17, 82 Atl. 1047.

(b) Pending an appeal from an order after judgment by default refusing to remove a case, the court can extend the judgment, and issue execution thereon.—*Rice v. West*, 42 Md. 614.

(c) An appeal without an appeal bond will not stay execution.—*McKim v. Mason*, 3 Md. Ch. 186; *Eakle v. Smith*, 24 Md. 339.

(d) A bond taken by chancery court on appeal from an order dissolving an injunction, though taken without statutory authority, stays operations on such order.—*Fullerton v. Miller*, 22 Md. 1. (For statute enacted since this decision, see Code, art. 5, § 29.)

(e) An appeal bond upon which no recovery can be had by the obligee, will not stay execution upon the original judgment.—*Tucker v. State*, 11 Md. 322.

(f) A writ of error is not a supersedeas, where the bond is not given in double the amount of the debt and costs recovered.—*Johnson v. Goldsborough*, 1 H. & J. 499.

(g) If a writ of error has been dismissed by plaintiff in error upon his own motion, a second writ of error, though bond be filed, will not operate as a supersedeas, if the first writ of error was a supersedeas.—*Whetcroft v. Dorsey*, 1 H. & J. 482.

(h) Whether execution upon an equity decree shall be stayed pending appeal is in the sound discretion of the court.—*Williams*

*v. Savage Mfg. Co.*, 1 Md. Ch. 306. (See Code, art. 5, § 29.)

**§ 461. Use of appeal or cost bond as supersedeas bond.**

(a) A bond taken by a chancery court on appeal from an order dissolving an injunction, though taken without statutory authority, stays operations on such order.—*Fullerton v. Miller*, 22 Md. 1. (For statute enacted since this decision, see Code, art. 5, § 29.)

**§ 462. Upon security.**

**§ 463.— Parties to whom security to be given.**

**§ 464.— Sureties.**

(a) Under Code, art. 5, § 53, providing that appeal bonds to stay proceedings shall be executed "with sufficient securities," an appeal bond with only one surety is invalid as a statutory bond.—*Harris v. Regeater*, 70 Md. 109, 16 Atl. 386.

**§ 465.— Amount or penalty of bond or undertaking.**

*Cross-Reference.*

Appeal or cost bond as supersedeas, see ante, § 461.

(a) The writ of error will be ineffectual to stay execution where the bond filed is not in double the sum recovered, with costs.—*Johnson v. Goldsborough*, 1 H. & J. 499.

**§ 466.— Conditions of bond or undertaking.**

*Cross-Reference.*

Breach or fulfillment of conditions, see post, §§ 1229-1232.

(a) The bond is ineffectual to stay execution where, according to its terms, it will not be enforceable in the event of the affirmation of the judgment.—*Johnson v. Goldsborough*, 1 H. & J. 499.

**§ 467.— Form and contents of bond or undertaking.**

**§ 468.— Time of giving bond.**

**§ 469.— Execution of bond or undertaking.**

*Cross-Reference.*

Execution on Sunday, see "Sunday," § 30.

(a) The sureties, on a supersedeas of a judgment, signed the blank form in the usual way, and the clerk of the court at-

tested the same. In filling out the blanks afterwards, the clerk inadvertently wrote "June" instead of "July," but, on discovering his mistake, corrected the same by altering the letters "ne" to "ly." *Held*, that the clerk had no authority to make the correction, and that the supersedeas must be stricken out.—*Bowes v. Isaacs*, 33 Md. 535.

**§ 470.—Approval of bond or undertaking.**

*Cross-Reference.*

Justification of sureties, see ante, § 464.

(a) An appeal bond approved by the chancellor, though not in statutory form, *held* sufficient as a supersedeas.—*Smith v. Dorsey*, 6 H. & J. 261.

**§ 471.—Delivery or filing and service of bond or undertaking.**

**§ 472.—Deposit as security.**

(a) Under Code, art. 5, § 53, providing that appeal bonds to stay proceedings shall be executed "with sufficient securities," an appeal bond with only one surety is invalid as a statutory bond.—*Harris v. Regester*, 70 Md. 109, 16 Atl. 386.

**§ 473.—Proceeding in forma pauperis.**

**§ 474.—Amendment of bond or undertaking.**

**§ 475.—Additional or new security.**

**§ 476.—Upon allowance by court or judge.**

**§ 477.—Authority of court or judge.**

**§ 478.—Application and proceedings thereon.**

**§ 479.—Grounds for allowance.**

*Cross-References.*

Judgments which may be superseded in general, see ante, § 458.

Review of discretion, see post, § 986.

(a) A court of chancery may grant a stay pending appeal upon such conditions as it thinks proper, where it appears that in the event of reversal by the appellate court the enforcement of the decree of the lower court may create irreparable injury.—*Thompson v. McKim*, 6 H. & J. 302.

**§ 480.—Security or other conditions.**

**§ 481.—Order for supersedeas or stay.**

*Cross-Reference.*

See ante, § 479.

(a) An appeal does not of itself stay execution of the decree appealed from, but,

pending the appeal proceedings may be stayed by order of the chancellor, on application to him for that purpose, or by a special order of the Court of Appeals, on such terms as the peculiar circumstances of the case may require.—*Thompson v. McKim*, 6 H. & J. 302.

(b) An appeal to the Court of Appeals and giving bond will not, without further order, operate as a supersedeas.—*Williams v. Savage Mfg. Co.*, 1 Md. Ch. 306. (See Code, art. 5, § 29.)

**§ 482. Modifying or vacating.**

**§ 483. Operation and effect pending further appeal.**

**§ 484. Scope and effect as stay.**

**§ 485.—Proceeding in cause in general.**

(a) Under Code, art. 5, § 5, providing that when a case is taken from the orphans' court to a law court, and when appeal is taken from the law court to the Court of Appeals, such appeal shall stay all proceedings in the orphans' court, an order in the orphans' court, made in a case one day after such appeal had been taken, was without authority; and it was immaterial that the clerk of the law court, without authority, had sent back the proceedings to the orphans' court, and that the orphans' court was not aware of the appeal.—*Berry v. Safe-Deposit & Trust Co. of Baltimore*, 93 Md. 240, 48 Atl. 502.

(b) On a judgment against four, from which one of them appeals, an execution against the rest cannot lawfully issue before a judgment of severance has been passed by the upper court.—*Cumberland Coal & Iron Co. v. Jeffries*, 27 Md. 526.

(c) Under Code, art. 5, § 55, in cases of a judgment on which an execution has been issued, "whether the same has been in part executed or not," the filing an appeal bond, approved as required, shall stay any execution which has been issued on any such judgment. The appeal per se does not operate as a supersedeas, whether the execution be issued or not.—*Eakle v. Smith*, 24 Md. 339.

(d) By a long practice, on filing a bond at the time of taking an appeal from a decree of the court of chancery, all proceed-

ings are stayed on the decree pending the appeal, in analogy to the provisions of the second section of act 1713, c. 4, in relation to appeals in courts of common law; but as no appeal lies at common law, except on a final judgment, that analogy holds only in cases of appeal from final decrees in chancery.—*Thompson v. McKim*, 6 H. & J. 302.

(e) An appeal from a judgment with security does not supersede an execution previously issued.—*Beatty v. Chapline*, 2 H. & J. 7.

(f) A writ of error only operates to stay proceedings until the errors are disposed of, and does not vacate a levy of execution on realty.—*Beatty v. Chapline*, 2 H. & J. 7.

(g) After a *fi. fa.* has been laid, and before a sale of the property thereunder, a writ of error bond, with security, having been approved, it operates as a supersedeas to stay further proceedings under the *fi. fa.*—*State v. Page*, 1 H. & J. 475.

§ 486.— Arrest and bail.

§ 487.— Attachment and garnishment.

§ 488.— Injunction.

*Cross-References.*

Authority of court or judge, see ante, § 477.

Necessity of allowance by court, see ante, § 460.

Power of lower court to issue pending appeal, see ante, § 447.

Right to supersede, see ante, § 458.

*Annotation.*

Suspension of injunction pending appeal.—38 L. R. A. (N. S.) 436, note.

(a) An order dissolving an injunction is stayed, leaving the injunction in full force, where an appeal is taken and an appeal bond filed.—*Hamilton v. State*, 32 Md. 348.

(b) The operation of an injunction is stayed, pending appeal, where a bond is filed.—*Gelston v. Sigmund*, 27 Md. 345. [*Cited and annotated in 1 L. R. A. (N. S.) 556, on effect of appeal on injunction.*]

(c) A case was referred to an arbitrator by consent, under rule of the court in which the suit was pending. While the matter was still before the arbitrator, defendant obtained an injunction restraining plaintiff from proceeding with the reference. The

latter filed an answer and took an appeal from the order granting the injunction, and gave bond as required by law. The arbitrator having filed his award during the pendency of the appeal, on exceptions to it for that cause, *held*, that by the proper construction of Code, art. 5, § 29, upon appeal taken, and the giving an appeal bond the operation and effect of the injunction entirely ceased until judgment should be pronounced by the appellate tribunal.—*Northern Cent. R. Co. v. Canton Co. of Baltimore*, 24 Md. 500. [*Cited and annotated in 1 L. R. A. (N. S.) 556, on effect of appeal on injunction.*]

(d) An appeal, without supersedeas, does not annul an order of injunction, and a party who disobeys the order by an act done after the appeal may be punished for contempt.—*Williamson v. Carnan*, 1 G. & J. 184.

§ 489.— Appointment and proceedings of receiver.

*Cross-References.*

Power of lower court to appoint pending appeal, see ante, § 448.

Right to supersede, see ante, § 458.

§ 490.— Other actions or proceedings.

§ 491. Proceedings in cause upon giving security for restitution.

§ 492. Proceedings in violation of supersedeas or stay.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## X. RECORD AND PROCEEDINGS NOT IN RECORD.

*Cross-References.*

Record for purpose of trial de novo on evidence taken in lower court, see post, § 894.

References to record in assignment of errors, see post, § 743.

References to record in brief, see post, § 760.

Review of proceedings relating to record, see ante, § 227.

Accounting of executor or administrator, see "Executors and Administrators," § 510.

Actions relating to wills or probate, see "Wills," § 399.

Admiralty, see "Admiralty," § 115.

Appeal from judgment confirming municipal assessment, see "Municipal Corporations," § 508.

Appeals from justices' courts, see "Justices of the Peace," § 164.

Bankruptcy proceedings, see "Bankruptcy," § 463.  
 Condemnation proceedings, see "Eminent Domain," § 259.  
 Criminal proceedings, see "Criminal Law," §§ 1085-1128.  
 Election contests, see "Elections," § 305.  
 Expenses of record as items of costs, see "Costs," §§ 254-256.  
 Following state statutes and practice in federal courts, see "Courts," § 356.  
 Habeas corpus proceedings, see "Habeas Corpus," § 113.  
 Highway proceedings, see "Highways," § 58.  
 In actions by or against husband or wife, see "Husband and Wife," § 243.  
 In actions of forcible entry and detainer, see "Forcible Entry and Detainer," § 43.  
 In divorce suits, see "Divorce," § 183.  
 In mandamus proceedings, see "Mandamus," § 187.  
 Insolvency proceedings, see "Insolvency," § 179.  
 Liability of clerk for failure to transmit transcript, see "Clerks of Courts," § 72.  
 On appeal from district courts in cities, see "Courts," § 194.  
 On appeal from grant or refusal of license, see "Intoxicating Liquors," § 75.  
 On appeal from municipal courts, see "Courts," § 190.  
 On appeal in proceedings for equitable relief against judgment, see "Judgment," § 467.  
 On review in the United States Supreme Court of decisions of state courts, see "Courts," § 398.  
 Practice in federal courts, see "Courts," § 356.  
 Probate proceedings, see "Wills," § 370.  
 Record on review by United States Circuit Court of Appeals, see "Courts," § 405.  
 Rules of court as to record, see "Courts," § 80.  
 Supplying lost or destroyed records, see "Records," § 17.

#### (A) MATTERS TO BE SHOWN BY RECORD.

##### *Cross-References.*

Admissibility of evidence to supplement record, see post, § 715.  
 Consideration of matters not apparent of record, see post, § 712.  
 Defects or errors amendable, see post, § 645.  
 Effect of defects in general, see post, § 634.  
 Filing and annexing assignment of errors to record, see post, § 745.  
 Record or parts thereof to be included in transcript, see post, § 597.  
 Review dependent on presentation of question by record, see post, § 670.  
 Criminal prosecutions, see "Criminal Law," §§ 1086, 1087.

#### § 493. Jurisdiction of lower court.

##### *Cross-References.*

Jurisdiction of appellate court, see post, § 503.  
 Proceedings of intermediate courts, see post, § 512.  
 Process as part of record, see post, § 517.  
 Reversal for failure to show jurisdiction, see post, § 635.  
 Showing objection to jurisdiction, see post, § 499.  
 Sufficiency of record to present questions for review, see post, § 674.  
 On review in United States Circuit Court of Appeals, see "Courts," § 405.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 494. Nature and form of decision.

##### *Cross-References.*

Judgment as part of record, see post, § 529.  
 Necessity of including in transcript or return, see post, § 597.  
 Necessity of judgment or order on demurrer appearing of record, see post, § 680.  
 Necessity of showing in abstract, see post, § 581.

(a) Where the record on appeal contains no judgment entry, the appeal or writ of error cannot be considered.—*Heiskell v. Rollins*, 81 Md. 397, 32 Atl. 249.

#### § 495. Grounds of decision.

##### *Cross-Reference.*

Grounds and reasons for ruling, see post, § 716.

#### § 496. Proceedings sustaining judgment or order.

##### *Cross-References.*

Incorporating evidence and stenographer's report, see post, § 515.  
 Necessity of including pleadings in abstract, see post, § 581.  
 Pleadings as part of record, see post, § 518.  
 Stipulations as part of record, see post, § 519.

(a) A recital in a decree that the cause stood ready for hearing is conclusive on the point of its having been set down for final hearing.—*Rothenburg v. Vierath*, 87 Md. 634, 40 Atl. 655.

(b) If the pleadings, in a record transmitted to the Court of Appeals, are entered short, the judgment must be reversed.—*Scholls v. Shriner*, 3 H. & J. 490.

**§ 497. Grounds of review.***Cross-Reference.*

Dismissal for want of interest, see post, § 780.

(a) A recital in a decree that the cause stood ready for hearing is conclusive on the point of its having been set down for final hearing.—*Rothenburg v. Vierath*, 87 Md. 634, 40 Atl. 655.

(b) That refusal to submit special interrogatories may be reviewed, the record should show that they were propounded before argument to jury was begun.—*Caledonia Fire Ins. Co. v. Traub*, 86 Md. 86, 37 Atl. 782.

**§ 498. Presentation and reservation of grounds of review.***Cross-References.*

Necessity for presentation and reservation, see ante, §§ 169-320.

Necessity of bill of exceptions, case, or statement, see post, § 547.

Proceedings of intermediate courts, see post, § 512.

Sufficiency of abstract, see post, § 586.

Sufficiency of showing in bills of exceptions, see "Exceptions, Bill of," § 8.

**§ 499.—Questions and objections in general.***Cross-References.*

Exceptions to rulings, see post, § 501.

Necessity of bill of exceptions, case, or statement, see post, § 548.

Rulings on evidence, see post, § 500.

(a) Under Code, art. 5, § 9, providing that in no case shall the Court of Appeals decide any point or question which does not plainly appear by the record to have been tried and decided by the court below, and no instruction actually given shall be deemed to be defective by reason of any assumption therein of any fact by the court or because of a question of law having been thereby submitted to the jury, unless it appear from the record that an objection thereto for such defect was taken at the trial, objections to granted prayers on the ground that they submitted a question of law to the jury were not available on appeal, where the record failed to show that special exceptions were filed to the prayers, or that such objections were made in the court below.—*Dexter Sulphite Pulp & Paper Co. v. McDonald & Fisher*, 103 Md. 381, 63 Atl. 958.

(b) Under Code, art. 5, § 9, objection that a prayer for instruction which was granted wrongly assumed that there was evidence from which the jury could infer a certain fact, cannot be considered on appeal, the record not showing that it was made in the court below or passed on by it.—*Lewis v. Tapman*, 90 Md. 294, 45 Atl. 459, 47 L. R. A. 385.

(c) The appellate court will not pass upon a question unless the record shows it actually arose and was decided below.—*Tyson v. Shueey*, 5 Md. 540; *Gabelein v. Plaenker*, 36 Md. 61.

(d) Under act 1825, c. 117, § 2 (see Code, art. 5 §§ 9, 36), relating to appeals from decrees in equity, where a point has been stated and exceptions filed thereto, the record must present to the appellate court the same questions on which the court below passed.—*Thomson v. Albert*, 15 Md. 268.

(e) Under act 1825, c. 177 (Code, art. 5, § 9), a judgment of the county court cannot be reversed on appeal unless it appear that the point on which a reversal is sought was presented to the county court, and judgment rendered thereon.—*Sasscer v. Walker*, 5 G. & J. 102, 25 Am. Dec. 272; *Grahame v. Harris*, 5 G. & J. 489.

**§ 500.—Rulings by lower court.***Cross-References.*

See ante, § 499.

Ruling on motion for new trial, see post, § 502.

Necessity of judgment or order, see post, § 680.

Necessity for showing that evidence was actually introduced, see post, § 690.

(a) Under the express terms of Code, art. 5, § 9, no question will be passed on by the Court of Appeals which does not plainly appear by the record to have been decided by the court below.—*Williams v. New York Life Ins. Co.*, 122 Md. 141, 89 Atl. 97.

(b) A ruling on a motion to strike out an answer of a witness will not be disturbed on appeal where the record is so confused by a colloquy between court and counsel that it cannot be determined to what question the motion was directed.—*Hanrahan v. City of Baltimore*, 114 Md. 517, 80 Atl. 312.



(c) The appellate court will not pass upon a question unless the record shows it actually arose and was decided below.—*Tyson v. Shueey*, 5 Md. 540; *Gabelein v. Plaenker*, 36 Md. 61.

(d) Under act 1825, c. 177, § 2 (see Code, art. 5, §§ 9, 36), relating to appeals from decrees in equity where a point has been stated and exceptions filed thereto, the record must present to the appellate court the same questions on which the court below passed.—*Thomson v. Albert*, 15 Md. 268.

(e) Under act 1825, c. 177 (Code, art. 5, § 9), a judgment of the county court cannot be reversed on appeal unless it appear that the point upon which a reversal is sought was presented to the county court, and judgment rendered thereon.—*Sasscer v. Walker*, 5 G. & J. 102, 25 Am. Dec. 272; *Grahame v. Harris*, 5 G. & J. 489.

### § 501.—Exceptions.

#### *Cross-References.*

Affirmance for failure to show, see post, § 634.

Presentation by bill of exceptions or by record proper, see post, § 549.

Presumptions as to taking of exceptions, see post, § 938.

Sufficiency of abstract, see post, § 586.

Instructions as part of record, see post, § 525.

(a) The Court of Appeals is precluded by Code, art. 5, § 9, and court rule 4, from examining the legal sufficiency of evidence to support a granted prayer, unless the objection and the rule thereon appear in the record by a special exception properly signed by the court.—*Zell v. Dunaway*, 115 Md. 1, 80 Atl. 215.

(b) Where the record on appeal does not show that any exception was taken to a prayer, though referred to in the brief, it will not be considered on appeal.—*Young v. Boyd*, 107 Md. 449, 69 Atl. 33.

(c) Plaintiffs' first bill of exceptions commenced, "At the trial of the cause," and the second bill, embracing the rulings on the prayers, was connected therewith in the usual form, and proceeded, "At the conclusion of the testimony the plaintiff, by his counsel, offered the following three prayers," which were set out in the record,

together with two of defendants'. It showed plaintiffs' exceptions to the quashing of defendants' prayers and to the modification of plaintiffs prayers by the court. *Held*, that the record as a whole showed that the exceptions were taken during the trial, and was sufficient.—*Fisher v. Andrews*, 94 Md. 46, 50 Atl. 407.

(d) Objections to a prayer for the want of legal evidence to sustain it, and the ruling thereon, must appear in the record by exceptions signed by the trial judge.—*Travelers' Ins. Co. v. Parker*, 92 Md. 22, 47 Atl. 1042.

(e) Under Code, art. 5, § 36, providing that, "on an appeal from a court of equity, no objection to any account stated and reported in said cause shall be made in the Court of Appeals, unless it shall appear by the record that such objection was made by exceptions filed in the court from which such appeal shall have been taken," where an exception is exact and definite as to the item of an account excepted to, and the ground of objection relied on upon appeal was fully covered in the testimony by both sides, it is not necessary that the reasons relied on to support the exception should have been stated therein.—*Stokes v. Detrick*, 75 Md. 256, 23 Atl. 846; *Haines v. Same*, *Ibid*.

(f) The exception to either the competency of the witness or the admissibility of the evidence must appear from the record to have been duly filed in the court from which the appeal is taken, and the mere noting of the exception by an examiner in chancery is not sufficient.—*Grand United Order Odd Fellows' Joint Stock Ass'n v. Merklin*, 65 Md. 579, 5 Atl. 544.

(g) On an appeal from a court of equity, no objection to the sufficiency of the averments of the bill or petition or to any account stated and reported in the case will be heard in the Court of Appeals, unless it appears by the record that such objection was made by exceptions filed in the court from which the appeal was taken, under Code, art. 5, § 36.—*Ashton v. Ashton*, 85 Md. 496.

(h) The admission and exclusion of evidence against objections cannot be considered when the record fails to show that any exceptions were taken to such rulings.—*Ashton v. Ashton*, 35 Md. 496.

(i) If the record does not show that exceptions were taken to the ruling of the court below, the appellate court will not review the same on appeal.—*Dorsey v. Whetcroft*, 1 H. & J. 463; *Ayers v. Kain*, 3 G. & J. 24.

### § 502.—Motions for new trial.

#### *Cross-References.*

Authentication of record, see post, § 616.

Effect of omission, see post, § 635.

Grounds and reasons for ruling, see post, § 716.

Including matters in motion for new trial which should go into record proper, see post, § 713.

Necessity of including motion in abstract, see post, § 581.

Presentation by bill or by record, see post, § 549.

Review of decision on motion dependent on presentation of questions by record, see post, § 706.

When part of record, see post, § 528.

Necessity of setting forth motion, and proceedings thereon, see post, § 706.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 503. Jurisdiction of appellate court.

#### *Cross-References.*

Dismissal for failure to show, see post, § 635.

Dismissal on court's own motion for failure to show, see post, § 792.

Jurisdiction of lower court, see ante, § 493.

Proceedings of intermediate courts, see post, § 512.

#### *Annotation.*

What the record must show respecting the presentation and decision of a Federal question in order to confer jurisdiction on the Supreme Court of the United States of a writ of error to a state court.—63 L. R. A. 471, note.

The record for the purpose of showing jurisdiction in the Supreme Court of the United States of a writ of error to a state court.—63 L. R. A. 329, note.

(a) The jurisdiction of a court to entertain appeals from the officer of registration being special and limited, proceedings on review must show on their face that everything was done which the law required as the basis of the court's authority.—*Cox v. Bryan*, 81 Md. 287, 31 Atl. 852.

### §§ 504-509. Taking and perfecting of appeal or other proceeding for review.

#### *Cross-References.*

Effect of omissions, see post, § 635.

Necessity of showing in transcript, see post, § 597.

Proceedings for appeal or other review as part of record, see post, § 534.

Proceedings of intermediate courts, see post, § 512.

Necessity of showing in abstract, see post, § 581.

Sufficiency of abstract, see post, § 586.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 510. Filing of papers part of record.

### § 511. Making and filing of bill of exceptions, case, or statement.

#### *Cross-References.*

Authentication and certification, see post, § 613.

Incorporation of bill of exceptions into transcript, see post, § 600.

Necessity of showing in abstract, see post, § 581.

When part of record in general, see post, §§ 536, 537.

### § 512. Proceedings of intermediate courts.

#### *Cross-References.*

Proceedings as part of record, see post, § 532.

Sufficiency of record to present questions for review, see post, § 711.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 513. Several appeals or proceedings for review, and cross-appeals.

#### *Cross-Reference.*

Necessity of separate transcript, see post, § 595.

(a) The appellants excepted to an auditor's report; the court below overruled their exceptions and confirmed the report; and on appeal by them they were confined to those questions, and not allowed to avail themselves of exceptions, raising other objections, taken by other parties.—*Thomson v. Albert*, 15 Md. 268. [*Cited and annotated in 34 L. R. A. 326, on conclusiveness of prior decisions on subsequent appeals.*]

(b) Bills of exception must be considered wholly distinct from each other unless they contain sufficient words of connection.—*Armstrong v. Thruston*, 11 Md. 149.

(c) Evidence offered as part of one bill of exceptions will not be considered with another bill of exceptions, when there is nothing in the record to connect them; and, where it does not appear with any legal certainty which exception was first tendered or signed, the court can only recognize them as separate and distinct bills, wholly unconnected as to the facts they contain.—*Gist v. Cockey*, 7 H. & J. 134.

#### § 514. Successive appeals or proceedings for review.

##### *Cross-Reference.*

Use of former transcript, see post, § 595.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 515. Incorporating evidence and stenographer's report.

##### *Cross-References.*

Effect of omission of evidence in general, see post, § 635.

Effect of omission of evidence on review, see post, § 671.

Evidence as part of record in general, see post, §§ 522-524.

Incorporating evidence in case or statement, see post, § 560.

Incorporating original bill of exceptions in transcript, see post, § 600.

Making and filing certificate of evidence, see post, § 574.

Necessity of bringing up evidence by bill of exceptions, case, or statement, see post, § 548.

Necessity of including evidence in abstract, see post, § 581.

Presumptions where facts or evidence are not shown by record, see post, §§ 907-909.

Stenographer's report as substitute for case or statement, see post, § 553.

Incorporating evidence in bill of exceptions, see "Exceptions, Bill of," §§ 12-17.

Mandamus to compel stenographer to furnish report, see "Mandamus," § 3.

Necessity of bill of exceptions, case, or statement presenting evidence, see post, § 548.

Incorporating stenographer's report in case, or statement, see post, § 561.

When part of record, see post, § 522.

(a) Under Code, art. 93, §§ 255, 256, requiring that in plenary proceedings all the depositions shall be taken in writing and recorded, and that on appeal in such a case the other proceedings shall be transmitted with the decree to the appellate court, a decree in such a case cannot be sustained where on appeal therefrom no evidence ap-

pears in the record.—*Stonesifer v. Shriver*, 100 Md. 24, 59 Atl. 139.

(b) Where letters of administration were revoked, as prematurely issued, the fact that the evidence was not incorporated in the record constituted no ground for dismissing the administrator's appeal from the order.—*Williams v. Addison*, 93 Md. 41, 48 Atl. 458.

(c) Under Laws 1896, c. 202, § 122 (see Code, art. 33, § 132), providing that, on appeal, the testimony shall be sent to the appellate court as part of the record, an agreement of counsel submitting as the evidence a condensation or selection of the testimony, made after trial in the lower court, is not a sufficient compliance.—*Leonard v. Woolford*, 91 Md. 626, 46 Atl. 1025.

#### (B) SCOPE AND CONTENTS OF RECORD.

##### *Cross-References.*

Consideration of matters improperly included in record, see post, § 713.

Consideration of matters not apparent of record, see post, § 712.

Including matters in bill of exceptions which should go into record proper, see post, § 713.

Matters to be shown by record, see ante, §§ 493-515.

Necessity of bill of exceptions, case, or statement of facts in general, see post, §§ 544-555.

Presumptions as to facts and proceedings not included in record, see post, §§ 905-939.

Review dependent on presentation of questions by record, see post, §§ 671-711.

Criminal prosecutions, see "Criminal Law," § 1088.

In divorce suits, see "Divorce," § 183.

On appeal from municipal courts, see "Courts," § 190.

On appeal from order granting or denying removal of cause to federal court, see "Removal of Causes," § 98.

#### § 516. Proceedings included in general.

##### *Cross-Reference.*

Proceedings sustaining judgment or order, see ante, § 496.

(a) A rule of a trial court may be properly presented on appeal by bill of exceptions, certificate of the judge, or agreement of counsel.—*City of Baltimore v. Thomas*, 115 Md. 212, 80 Atl. 726.

(b) Where no bill of exceptions founded on remarks of the trial judge appears in

the record, on appeal, the propriety of the remarks is not presented for consideration.—*Chesapeake Beach Ry. Co. v. Donahue*, 107 Md. 119, 68 Atl. 507.

(c) The opinion of the court below forms no part of the record.—*Methodist Episcopal Church v. Browne*, 39 Md. 160; *State v. Ramsburg*, 43 Md. 325.

(d) Where, on a plea of nul tiel record to an action of debt on a judgment, the court decide by an inspection of the record, the record inspected, not being incorporated in the pleadings, makes no part of the proceedings, and does not go up to the appellate court.—*Dorsey v. Whetcroft*, 1 H. & J. 463.

### § 517. Process and appearance.

#### *Cross-References.*

Loss of record, see post, § 543.

Order granting leave to amend, see post, § 520.

Requisites of record as to jurisdictional questions, see ante, § 493.

Sufficiency of record to present questions for review, see post, § 677.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 518. Pleadings and proceedings relating thereto.

#### *Cross-References.*

Necessity of including pleadings in abstract, see post, § 581.

Necessity of pleadings appearing in record, see ante, § 496.

Presentation of exceptions taken by bill of exceptions, case, or statement, see post, § 549.

Special orders as to contents of record, see post, § 538.

Sufficiency of record to present questions for review, see post, §§ 679-682.

Amendment after judgment, see post, § 530.

Exhibits at trial, see post, § 524.

(a) Under Code, art. 5, § 2, providing that any party may appeal from any judgment or determination of any court of law, an appeal from a final judgment brings up for review rulings on demurrers to pleadings without a bill of exceptions.—*Kendrick & Roberts v. Warren Bros. Co.*, 110 Md. 76, 72 Atl. 465.

(b) A ruling sustaining a motion ne recipiatur to a plea should be presented for review by bill of exceptions.—*Spencer v. Patten*, 84 Md. 414, 35 Atl. 1097.

### § 519. Stipulations.

#### *Cross-References.*

As to contents of record, see post, § 539.  
Consideration of matters appearing by stipulation or agreement, see post, § 714.

(a) Where a cause was submitted to the court on an agreed statement of facts, which was not incorporated in the bill of exceptions, the statement cannot be examined in reviewing a request for verdict on such statement.—*Robey v. State*, 94 Md. 61, 50 Atl. 411, 89 Am. St. Rep. 405.

(b) A motion to strike out a judgment by confession was heard on "an agreement as to facts and testimony" which provided that testimony of certain named witnesses in an equity suit, attacking the judgment, together with papers in that case, "should be used and considered as evidence at the hearing of the motion"; and, on an appeal from an order striking out the judgment, every paper specified in the agreement, and the full testimony in the equity case of the witnesses named in the agreement, were set out at length, and duly certified by the clerk, immediately under the agreement. *Held*, that the clerk, in connection therewith, properly certified that the record transmitted was a full and complete transcript of the proceedings as agreed on between counsel, and that a bill of exceptions was unnecessary to review the action below.—*Tyrrell v. Hilton*, 92 Md. 176, 48 Atl. 55.

### § 520. Interlocutory motions, orders, and judgments.

#### *Cross-References.*

Affidavits, see post, § 523.

Motion for judgment, see post, § 529.

Motions in arrest for new trial or rehearing, see post, § 528.

Motions relating to pleadings, see ante, § 518.

Presentation of exceptions taken by bill of exceptions, case, or statement, see post, § 549.

Record on review of interlocutory decision, see post, § 531.

Special orders as to contents of record, see post, § 538.

Sufficiency of record to present questions for review, see post, § 684.

Removal of cause to federal court, see "Removal of Causes," § 98.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 521. Evidence.***Cross-References.*

Filing longhand manuscript, requisites of record to show, see ante, § 515.  
 Incorporating evidence in case or statement, see post, § 560.  
 In proceedings to set aside judgment, see post, § 529.  
 Necessity of bringing up evidence by bill of exceptions, case, or statement, see post, § 548.  
 Necessity of including evidence in abstract, see post, § 581.  
 Presentation of exceptions taken by bill of exceptions, case, or statement, see post, § 549.  
 Proceedings on reference, see post, § 526.  
 Procuring and filing certificate of evidence, see post, § 574.  
 Requisites of record as to incorporation of evidence, see ante, § 515.  
 Sufficiency of record to present questions for review, see post, §§ 690-692.

**§ 522.— In general.**

(a) Code, art. 16, § 261, provides that evidence taken thereunder shall be written as delivered by the witnesses in such manner as the court may have by special order or general rule directed, and when so written shall be filed as a part of the proceedings, to be used as if taken before an examiner, or, if the court orders, the evidence shall be reduced to writing, as in the case of bills of exception at common law, etc. *Held*, that where the evidence in a divorce suit was taken under such section, and the record did not show either a special order or rule of court therefor, nor who took the evidence, nor whether it was properly reported and the rulings of the court correctly stated, rulings on the admissibility of evidence could not be reviewed on appeal.—*Lemmert v. Lemmert*, 103 Md. 57, 63 Atl. 380.

(b) Matter in the return of a writ of diminution, consisting of a conversation between the judge, and the parties at the conclusion of the hearing, which, if considered as testimony, was taken without any order or leave, forms no proper part of the record.—*Goodhues v. Goodhues*, 90 Md. 292, 44 Atl. 990.

**§ 523.— Depositions and affidavits.***Cross-References.*

Sufficiency of record to present questions for review, see post, § 683.  
 Affidavits accompanying or supplementing transcript, see post, § 542.

In proceedings to set aside judgment, see post, § 529.

On motion for new trial, see post, § 528.  
 Proceedings in intermediate courts, see post, § 532.

(a) Under Code, art. 5, § 61, providing that in the orphans' court, on judgment in summary proceedings and on the testimony of witnesses, an appeal shall not be allowed unless appellant notify his intention, and request that the testimony be reduced to writing, the depositions to be at the cost of the party making the request, the depositions must be taken and reduced to writing as given by the witness before they can be properly brought before the court for review.—*Cecil v. Harrington*, 18 Md. 510.

**§ 524.— Documents.***Cross-Reference.*

Exhibits or instruments sued on attached to or filed with pleadings, see ante, § 518.

(a) A judgment used in evidence cannot be considered, unless it is made part of the record by the bill of exceptions.—*McKuen v. Duvall*, 45 Md. 501.

(b) A judgment of the county court upon an issue joined on a plea of nul tiel record cannot be reviewed in the appellate court, when the appellant did not except to that judgment and incorporate the record which was submitted to the court in a bill of exceptions, nor put any matter upon the record to show why said judgment should not be rendered.—*Ayres v. Kain*, 3 G. & J. 24.

**§ 525. Instructions.***Cross-References.*

Effect of incorporating original bill of exceptions in transcript, see post, § 600.  
 Identification of instructions annexed to record, see post, § 616.  
 Necessity of including in abstract, see post, § 581.  
 Necessity of showing exceptions to instructions by record, see ante, § 501.  
 Necessity of showing objections by record, see ante, § 499.  
 Presentation of exceptions taken by bill of exceptions, case, or statement, see post, § 549.  
 Proceedings in intermediate courts, see post, § 532.  
 Special orders as to contents of record, see post, § 538.  
 Sufficiency of record to present questions for review, see post, §§ 699-703.

**§ 526. Proceedings on reference.***Cross-Reference.*

Sufficiency of record to present questions for review, see post, § 687.

**§ 527. Verdict, findings, or decision.***Cross-References.*

Necessity of bill of exceptions, case, or statement to review rulings in general, see post, § 547.

Necessity of including in transcript or return, see post, § 597.

Presentation of exceptions taken by bill of exceptions, case, or statement, see post, § 549.

Sufficiency of record to present questions for review, see post, § 704.

On judgment by default, see post, § 529.  
Report and findings of referee, see ante, § 526.

**§ 528. Proceedings on motion in arrest, for new trial, or rehearing.***Cross-References.*

Authentication of record, see post, § 616.  
Necessity of bill of exceptions, case, or statement presenting evidence, see post, § 548.

Necessity of including motion in abstract, see post, § 581.

Necessity of motion for new trial appearing at trial, see ante, § 502.

Opinion of lower court as part of record, see post, § 533.

Presentation of exceptions taken by bill of exceptions, case, or statement, see post, § 549.

Sufficiency of record to present questions for review, see post, § 706.

On review in United States Circuit Court of Appeals, see "Courts," § 405.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 529. Judgment or decree.***Cross-References.*

Necessity and sufficiency of showing in record, see ante, § 494.

Necessity of including in transcript or return, see post, § 597.

Necessity of record showing proceedings sustaining judgment or order, see ante, § 496.

Necessity of showing in abstract, see post, § 581.

Presentation of exceptions taken by bill of exceptions, case, or statement, see post, § 549.

Sufficiency of record to present questions for review, see post, § 707.

Special orders as to contents of record, see post, § 538.

(a) One appealing from an order denying a motion to strike out a judgment need not take a bill of exceptions; and, if the motion

rests on questions of fact, a transcript of the record, which contains a statement of the evidence admitted by counsel to have been given at the hearing of the motion, and approved by the court, is sufficient.—*Coulbourn v. Fleming*, 78 Md. 210, 27 Atl. 1041.

**§ 530. Proceedings after judgment.***Cross-Reference.*

Special orders as to contents of record, see post, § 538.

**§ 531. Record on review of interlocutory decision.***Cross-Reference.*

Interlocutory motions, judgments, and orders, see ante, § 520.

**§ 532. Record on review of decision of intermediate court.***Cross-References.*

Abstract of proceedings, see post, § 581.  
Opinion of intermediate court, see post, § 533.

Requisites of record as to showing proceedings of intermediate court, see ante, § 512.

Sufficiency of record to present questions for review, see post, § 711.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 533. Opinion of lower court.***Cross-References.*

Including in abstract of record, see post, § 581.

Reference to opinion to determine matters not in record, see post, § 717.

Opinion of state court as part of record to show federal question for purpose of review by United States Supreme Court of decision of state court, see "Courts," § 398.

(a) While Code, art. 16, § 168, requiring courts of equity to file written opinions, does not apply to Baltimore city, the equity judges of that city may write opinions if they desire, and when they do so their opinions may properly be inserted in the record on appeal.—*Title Guarantee & Trust Co. v. McCulloh*, 108 Md. 48, 69 Atl. 434.

(b) An opinion of a judge in a cause from which an appeal is taken, which does not affect the parties to the appeal, should not be included in the record.—*Jones v. Harbaugh*, 93 Md. 269, 48 Atl. 827.

(c) The opinion of the court below forms

no part of the record.—*Methodist Episcopal Church v. Browne*, 39 Md. 160; *State v. Ramsburg*, 43 Md. 325.

**§ 534. Proceedings for appeal or other review.**

*Cross-References.*

Requisites of record as to showing, taking, and perfecting of appeal or other proceedings, see ante, §§ 505-509.

Special orders as to contents of record, see post, § 538.

**§ 535. Bill of exceptions, case, or statement.**

*Cross-References.*

Authentication and certification, see post, § 613.

Including matters in bill of exceptions which should go into record proper, see post, § 713.

Incorporation of bill of exceptions into transcript, see post, § 600.

Necessity and sufficiency of record showing making and filing, see ante, § 511.

Necessity of abstract showing making and filing, see post, § 581.

Effect of recital of notice of appeal, see ante, § 509.

**§ 536.—As part of record in general.**

**§ 537.—Necessity of timely making and filing in lower court.**

*Cross-References.*

Showing timely filing in record, see ante, § 511.

Time for presentation, allowance, and filing, and compliance with requirements, see "Exceptions, Bill of," §§ 36-44.

**§ 538. Special orders as to contents of record.**

*Cross-References.*

Necessity of order to bring bill of exceptions, case, or statement into record, see ante, §§ 536, 537.

Necessity of order to bring instructions into the record, see ante, § 525.

Necessity of order to bring pleadings and proceedings relating thereto into the record, see ante, § 518.

Special orders as to contents of transcript, see post, § 603.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 539. Stipulations as to contents of record.**

*Cross-References.*

Consideration of matters appearing by stipulation or agreement, see post, § 714.

Stipulations as part of record, see ante, § 519.

Stipulations as to certification of evidence, see post, § 574.

Stipulations as to contents of transcript, see post, § 604.

Stipulations for amendment, see post, § 646.

(a) Orders passed and proceedings had in the lower courts, to be before the court on appeal, must form part of the bill of exceptions or the duly certified record. They cannot be brought before the court on agreements of counsel subsequently made.—*Smith v. Hallwood Cash Register Co.*, 97 Md. 354, 55 Atl. 525.

**§ 540. Papers referred to in record.**

*Cross-References.*

Exhibits and instruments sued on, see ante, § 518.

Filing of papers part of record, see ante, § 510.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 541. Official certificates or statements accompanying transcript.**

*Cross-References.*

Official certificates impeaching and contradicting record, see post, § 669.

To review rulings of lower court in proceedings to correct record, see post, § 649.

To supply matters not in record, see post, § 714.

(a) A statement appended to the record transmitted to the appellate court at the instance of plaintiff's attorney, in respect to an application for leave to supply additional proof in the court below, before the conclusion of the trial, but after the evidence has been closed, if not finally acted on by the court below, forms no part of the record, and is not before the Court of Appeals for consideration.—*Berry v. Derwart*, 55 Md. 66.

**§ 542. Affidavits accompanying or supplementing transcript.**

*Cross-References.*

Affidavits as part of record in general, see ante, § 523.

Affidavits impeaching or contradicting record, see post, § 670.

Affidavits on motion for new trial as part of record, see ante, § 528.

Loss of record, see post, § 543.

To supply matters not in record, see post, § 715.

(a) Appellant, by an ex parte affidavit, appended to a written exception, cannot, under chancery practice, avail himself of

the statements in the exception as evidence.—*Chappell v. Chappell*, 86 Md. 532, 39 Atl. 984.

**§ 543. Effect of loss or destruction of record.**

*Cross-Reference.*

Loss of transcript, see post, § 630.

*Annotation.*

Disposition of appeal where without fault of appellant the record is lost or incomplete.—25 L. R. A. (N. S.) 860, note.

(a) The mere loss of instructions or prayers is no ground for reversal of the judgment appealed from.—*Jones v. State*, 118 Md. 67, 83 Atl. 1100.

**(C) NECESSITY OF BILL OF EXCEPTIONS, CASE, OR STATEMENT OF FACTS.**

*Cross-References.*

Including matters in bill of exceptions which should go into record proper, see post, § 713.

Incorporation of bill of exceptions into transcript, see post, § 600.

Limitation of review by bill of exceptions, case, or statement, see post, § 671.

Matters constituting part of record without bill of exceptions, case, or statement of facts, see ante, §§ 516-543.

Necessity of abstract showing making and filing, see post, § 581.

Necessity that making and filing appear of record, see ante, § 511.

On motion to dismiss, see post, § 795.

Papers referred to, as part of record, see ante, § 540.

Part of record, see ante, §§ 536, 537.

Presumptions as to facts or evidence on failure to make, see post, § 907.

Presumptions as to making and contents, see post, § 938.

Presumptions in general on failure to make, see post, § 900.

Statement of case or of facts in briefs, see post, § 757.

Criminal prosecutions, see "Criminal Law," §§ 1090-1095, 1097-1099, 1102.

Making and filing of bill of exceptions, see "Exceptions, Bill of."

Necessity of determining constitutionality of law relating to stenographer's transcript of evidence, see "Constitutional Law," § 46.

**§ 544. Decisions not otherwise reviewable.**

*Cross-References.*

Effect of failure to make in general, see post, § 554.

Limitation of review by bill of exceptions, case, or statement, see post, § 671.

Review of errors on face of record in general, see post, § 672.

(a) An appeal from a final judgment brings up for review the action of the trial court in its rulings on demurrers to pleas and replications, and no bill of exceptions or writ of error designating the points is necessary.—*Feldmeyer v. Werntz*, 119 Md. 285, 86 Atl. 986.

(b) Where, by consent, a case is tried before a court without a jury upon an agreed statement of facts, rulings of the court should be brought up for review by bill of exceptions, the same as in a jury trial.—*Tyson v. Western Nat. Bank*, 77 Md. 412, 26 Atl. 520, 23 L. R. A. 161.

(c) An appeal entered in the year 1823, is not affected by act 1825, c. 117 (Code, art. 5, § 9), and in such a case it is the duty of the appellate court to notice errors apparent on the face of the record, or any legal objections to evidence set out in the record, though they form no part of the bill of exceptions.—*Mundell v. Hugh*, 2 G. & J. 193.

**§ 545. Proceedings not part of record.**

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 546. Presentation of grounds of review.**

**§ 547.— Facts not shown by record in general.**

*Cross-References.*

Scope and contents of record in general, see ante, § 527.

Sufficiency of record to present questions for review, see post, § 704.

(a) Where issue was joined upon a plea and traverse of nul tiel record, and tried by the court below upon an inspection of the record to which the pleadings referred, and the finding forms the subject of the only bill of exceptions taken at the trial, it is properly before the Court of Appeals for review.—*Warren Bros. Co. v. Kendrick & Roberts*, 113 Md. 603, 77 Atl. 847.

(b) Where the right of certain alleged co-parceners to appear in ejectment, and take upon themselves the defense of the cause to the extent of the undivided interest in the premises sued for, was resisted, and the parties were admitted, and the proceedings by which they were so admitted



all fully appear in the record, and are in no manner dependent upon extrinsic matter, such as would require a bill of exceptions to introduce, the question as to the propriety of their being so admitted is properly before the court on appeal, although such question was not presented by bill of exceptions.—*Minke v. McNamee*, 30 Md. 294, 96 Am. Dec. 577.

### § 548.—Evidence.

#### *Cross-References.*

Effect of omission of evidence or review, see post, §§ 635, 671.  
 Evidence as part of record in general, see ante, §§ 522-524.  
 Incorporating evidence in case or statement, see post, § 560.  
 Necessity of recital or certificate that all the evidence is included, see post, § 696.  
 Necessity of setting forth all the evidence, see post, § 695.  
 Procuring and filing certificate of evidence, see post, § 574.  
 Requisites of record as to incorporation of evidence, see ante, § 515.  
 Motions relating to verdict or findings, see ante, § 547.  
 Sufficiency of record to present questions for review, see post, § 694.  
 Necessity of incorporating evidence in record in general, see ante, § 515.  
 Necessity of setting forth all the evidence, see post, § 691.  
 Necessity of setting forth evidence excluded, see post, § 692.  
 Presentation of exceptions taken, see post, § 549.  
 Requisites of record in general, see ante, § 499.  
 Sufficiency of record to present questions for review, see post, §§ 690-692.

(a) The evidence must be presented on appeal either by a bill of exceptions or an agreed statement of facts.—*Gross v. Wood*, 117 Md. 362, 83 Atl. 337; *Wood v. Rosenheim*, 117 Md. 362, 83 Atl. 341.

(b) Where a motion rests on questions of fact, the evidence must be certified and presented by a bill of exceptions properly authenticated and filed.—*Long v. Hawken*, 114 Md. 234, 79 Atl. 190.

(c) Unless the facts relied on are in the record, a question as to an omission of service of pleadings must be presented by bill of exceptions.—*Chappell v. Real-Estate Pooling Co. of Baltimore City*, 89 Md. 258, 42 Atl. 936.

(d) A bill of exceptions, signed and sealed by the court below, must be taken to ques-

tions made to and decided by the court as to the insufficiency of evidence to support any instructions actually granted, before the Court of Appeals can review the questions.—*Albert v. State*, 66 Md. 325, 7 Atl. 697, 59 Am. Rep. 159.

(e) In order that the evidence may be considered on appeal or error, it must be brought up by a bill of exceptions, case, or statement of facts.—*Barnes v. Blackiston*, 2 H. & J. 376.

### § 549. Presentation of exceptions taken.

#### *Cross-Reference.*

Necessity of exceptions appearing in record in general, see ante, § 501.

(a) Though special exceptions which are filed are set forth in the record, they cannot be considered, unless incorporated in the bill of exceptions and certified by the seal of the trial judge.—*Hartsock v. Mort*, 76 Md. 281, 25 Atl. 303. [*Cited and annotated* in 16 L. R. A. (N. S.) 772, on damages for breach of contract to convey realty.]

(b) On appeal from the ruling of the court as to the admissibility and sufficiency of a record, where the issue was the existence of such record, a bill of exceptions must be taken, setting forth the record and the exceptions to the ruling thereon.—*McKnew v. Duvall*, 45 Md. 501.

### § 550. Changing case into bill of exceptions or special verdict.

### § 551. Necessity of case or statement in addition to bill of exceptions.

#### *Cross-Reference.*

Necessity of including rulings on evidence in bill of exceptions in addition to showing in statement of facts, see "Exceptions, Bill of," § 8.

### § 552. Scope and sufficiency of case, statement, or certificate of evidence.

#### *Cross-References.*

Defects or errors in making, see post, § 638.  
 Effect of including unnecessary matter, see post, § 636.  
 Effect of omissions, see post, § 635.  
 Matters included in general, see post, § 559.

Waiver of defects or objections, see post, § 644.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 553. Substitutes.

#### *Cross-References.*

Affidavits accompanying or supplementing transcript, see ante, § 542.

For abstract, see post, § 591.

For transcript, see post, § 610.

Official certificates or statements, see ante, § 541.

Special orders as to contents of record, see ante, § 538.

Stipulations as to contents of record, see ante, § 539.

(a) The rulings of the trial court can be certified to the appellate court only through the medium of bills of exceptions, regularly signed and sealed by the judge; and a certificate or statement of the facts, appended to the record and signed by the trial judge, cannot be considered.—*National Bank of Chester County v. Armstrong*, 66 Md. 113, 6 Atl. 584, 59 Am. Rep. 156.

### § 554. Effect of failure to make bill, case, or statement.

#### *Cross-References.*

Defects or errors in making bill, see post, § 637.

Extent of review, see ante, § 544.

Presumptions as to facts or evidence, see post, § 907.

(a) An appeal from rulings on evidence and prayers made by the trial judge, without a jury, will be dismissed, in the absence of a bill of exceptions.—*New v. Taylor*, 82 Md. 40, 33 Atl. 435.

(b) Error apparent on the face of the record may be taken advantage of on appeal without a bill of exceptions, case, or statement of facts.—*Mundell v. Hugh*, 2 G & J. 193.

### § 555. Effect of striking out bill, case, or statement.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### (D) CONTENTS, MAKING, AND SETTLEMENT OF CASE OR STATEMENT OF FACTS.

#### *Cross-References.*

Amendment in appellate court in general, see post, § 653.

Authentication and certification as part of transcript or return, see post, § 614.

Conclusiveness, see post, § 662.

Conflict in record, see post, § 664.

Defects or errors in making case or statement, see post, § 638.

Effect of failure to make see ante, § 554.

Effect of including unnecessary matter, see post, § 636.

Effect of omissions, see post, § 635.

Effect of striking out, see ante, § 555.

Impeaching or contradicting, see post, §§ 667-670.

Incorporation into transcript of record, see post, § 601.

Limitation of review by case or statement of facts, see post, § 671.

Mode and sufficiency of filing, see post, § 625.

Necessity that making and filing or service appear of record, see ante, § 511.

Printing, see post, § 631.

Remitting to lower court for amendment or correction, see post, § 657.

Scope and sufficiency in general, see ante, § 552.

Striking out in appellate court, see post, § 655.

Supplying omissions, see post, § 654.

Time for amendment, see post, § 643.

Waiver of defects or objections, see post, § 644.

In divorce suits, see "Divorce," § 183.

### § 556. Purpose and functions.

### § 557. Duty to make.

### § 558. Parties participating.

(a) Appellant could direct what papers should be copied into the record, if he could not agree with appellee thereon within a reasonable time.—*Estep v. Tuck*, 109 Md. 528, 72 Atl. 459.

### § 559. Matters included.

#### *Cross-Reference.*

Including case in bill of exceptions, see "Exceptions, Bill of," § 6.

### § 560. Incorporating and abridging evidence in general.

#### *Cross-References.*

Effect of omission, see post, § 635.

Evidence as part of record in general, see ante, §§ 522-524.

Necessity of bringing up evidence, see ante, § 548.

Requisites of record as to incorporation of evidence, see ante, § 515.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 561. Incorporating stenographer's report.

#### *Cross-References.*

Filing longhand manuscript, requisites of record to show, see ante, § 515.

Procuring and filing certificate of evidence, see post, §§ 574, 575.  
 Stenographer's report as substitute for case or statement, see ante, § 553.  
 Necessity of determining constitutionality of law relating to stenographer's transcript of evidence, see "Constitutional Law," § 46.

**§ 562. Incorporating matters of record, exhibits, and other documents.**

**§ 563. Form and arrangement.**

**§ 564. Time for making and filing or service.**

*Cross-References.*

Authority of court to declare appeal abandoned for failure to serve in time, see post, § 806.

Certificate of evidence, see post, § 574.

Review of discretion of court, see post, § 956.

Time for filing record in appellate court, see post, §§ 621-624.

Time for settlement, see post, § 567.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 565. Filing and serving proposed case or statement.**

**§ 566. Proposed amendments or counter case or statement.**

**§ 567. Time for settlement.**

*Cross-References.*

Time for making and filing or service, see ante, § 564.

Computation of time, see "Time," § 9.

**§ 568. Notice of and proceedings for settlement.**

**§ 569. Settlement and signing.**

*Cross-References.*

Approval of agreed case or statement, see post, § 573.

Certification as part of transcript, see post, § 614.

Unauthorized alterations, see post, § 577.

Authority to extend time for making, filing and service, see ante, § 564.

Amendment after transmission of record, see post, § 643.

**§ 570. Resettlement.**

**§ 571. Proceedings to compel settlement and signing.**

*Cross-References.*

To compel granting of certificate of evidence, see post, § 574.

Mandamus to compel stenographer to furnish copy of report, see "Mandamus," § 8.

**§ 572. Filing in lower court.**

*Cross-References.*

Filing in appellate court, see post, § 625.

Filing record in appellate court, see ante, §§ 627-630.

Time for filing or service of proposed case or statement, see ante, § 564.

Time for filing record in appellate court, see post, §§ 621-624.

**§ 573. Making and filing agreed case or statement.**

*Cross-References.*

As part of record, see ante, § 519.

Scope of review in case tried on agreed case or statement, see post, § 845.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 574. Procuring and filing certificate of evidence.**

*Cross-References.*

Affidavits as part of record, see ante, § 523.

Filing longhand manuscript, requisites of record to show, see ante, § 515.

Necessity of incorporating evidence, see ante, § 515.

Stipulations for amendment, see post, § 646.

Supplemental certificate, see post, § 578.

Transcript or abstract of testimony as substitute for case or statement, see ante, § 558.

(a) While a bill of exceptions is not allowed in trial on appeal from a justice of the peace, the evidence taken before the court below on appeal to it from a justice on a motion to quash the proceeding for want of jurisdiction may be certified to the Court of Appeals.—*Josselson v. Sonneborn*, 110 Md. 546, 73 Atl. 650.

(b) Evidence not authenticated by the trial judge, though contained in the record, cannot be considered on appeal in the absence of a stipulation that it is the evidence heard on the trial.—*Darrin v. Hoff*, 99 Md. 491, 58 Atl. 196.

(c) In orphans' court proceedings, failure of appellants to give notice of their intention to appeal, and to request that the testimony be reduced to writing, as required by Code, art. 5, § 61, is not sufficient cause for dismissing the appeal, where it does not appear what testimony, if any, was taken.—*Wrightson v. Tydings*, 94 Md. 358, 51 Atl. 44.

(d) A writing purporting to be signed by the trial judge, and reciting that the testimony of certain witnesses, as it appears in

the printed copy of the record, is substantially correct, save in a particular indicated, according to the recollection of the judge, but which does not show when or under what circumstances it was signed, or that it is to be taken, by agreement, as an authentication of the alleged testimony, is not such a certificate to the evidence as will entitle appellant to have the evidence considered on an appeal from an order overruling a motion to strike a judgment.—*Main v. Kinzer*, 91 Md. 760, 46 Atl. 1070.

(e) When the evidence in support of a motion to quash an attachment is brought up by a certificate of the judge, signed after the adjournment of the term, without consent, and no order extending the time was passed during the term, the evidence will not be considered.—*Palmer v. Hughes*, 84 Md. 652, 36 Atl. 481.

(f) Where, in a case in the orphans court, after petition and answer, testimony was taken and reduced to writing at the time by the court without objection, it not appearing at whose instance it was done, it was a compliance with the provisions of Code, art. 5, § 61, requiring appellant to give notice to appellees to have the testimony reduced to writing.—*Gephart v. Strong*, 20 Md. 522.

(g) The orphans' court has no authority to certify that testimony of witnesses, prepared ex parte from notes of one of the judges taken at the trial, is correct, and direct it to be incorporated into the record for the purpose of appeal.—*Cecil v. Harrington*, 18 Md. 510.

§ 575. Certificate as to correctness of stenographer's report.

§ 576. Report by trial judge of facts found.

§ 577. Unauthorized alterations.

§ 578. Supplemental case, statement, or certificate.

*Cross-Reference.*

Supplemental bill of exceptions, see "Exceptions, Bill of," § 59.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

(E) ABSTRACTS OF RECORD.

*Cross-References.*

Authentication and certification, see post, § 615.

Conclusiveness of abstract, see post, § 665.

Defects or errors in making abstract, see post, § 639.

Effect of failure to file in time, see post, §§ 627-630.

Effect of including unnecessary matter, see post, § 636.

Effect of omissions, see post, § 635.

Impeaching or contradicting, see post, §§ 667-670.

Limitation of review by, see post, § 671.

Omissions or defects as ground for dismissal on court's own motion, see post, § 792.

Presumptions as to making and contents, see post, § 939.

Printing, see post, § 631.

Service of copies, see post, § 632.

Striking out in appellate court, see post, § 655.

Supplying omissions, see post, § 654.

Time for filing, see post, §§ 621-624.

Time for objections, see post, § 643.

Waiver of defects or objections, see post, § 644.

Criminal prosecutions, see "Criminal Law," § 1103.

Expenses of abstracts as items of costs, see "Costs," §§ 254-257.

In divorce suits, see "Divorce," § 183.

No paragraphs under this sub-division. For cases in other jurisdictions, see same title and section numbers in Decennial and Key Number Digests, and references therein to Century Digest.

§ 579. Purpose and functions.

*Cross-References.*

As substitute for bill of exceptions or statement of facts, see ante, § 553.

As substitute for transcript of record, see post, § 610.

Presentation of exceptions taken by abstract or by bill, case or statement, see ante, § 549.

§ 580. Necessity and duty to make.

*Cross-References.*

Effect of failure to make abstract, see post, § 592.

Effect of failure to make proper abstract or brief, see post, § 639.

Substitutes, see post, § 591.

§ 581. Matters included.

*Cross-References.*

Effect of omissions, see post, § 635.

Scope and sufficiency, see post, § 586.

Presenting exceptions taken by abstract or by bill, case, or statement, see ante, § 549.

Necessity and effect of additional or counter abstract of appellee, see post, § 585.

Necessity and sufficiency of showing in record in general, see ante, § 494.

**§ 582. Setting out or abridging matters of record.**

*Cross-References.*

On appeal to United States Circuit Court of Appeals, see "Courts," § 405.  
Scope and sufficiency of abstract, see post, § 586.

**§ 583. References to record.**

**§ 584. Form and arrangement.**

**§ 585. Additional or counter abstract of appellee.**

*Cross-References.*

Amendment, see post, § 590.  
Conclusiveness and effect, see post, § 665.  
Scope and sufficiency, see post, § 586.

**§ 586. Scope and sufficiency.**

*Cross-References.*

Amendment, see post, § 590.  
Conclusiveness, see post, § 665.  
Defects or errors in making, see post, § 639.  
Effect of failure to make abstract, see post, § 592.  
Effect of including unnecessary matter, see post, § 636.  
Effect of omissions, see post, § 635.  
Matters to be included, see ante, § 581.  
Setting out or abridging matters of record, see ante, § 582.  
Substitutes, see post, § 591.  
Waiver of defects or objections, see post, § 644.  
Additional or counter abstract, see ante, § 585.  
Necessity of including in abstract in general, see ante, § 581.

**§ 587. Agreed abstract.**

**§ 588. Brief of evidence.**

*Cross-References.*

Effect of defects or errors, see post, § 639.  
Effect of failure to make brief, see post, § 592.  
Substitutes, see post, § 591.

**§ 589. Paper books.**

**§ 590. Amended and supplemental abstracts or briefs.**

**§ 591. Substitutes.**

*Cross-Reference.*

Including matters in bill of exceptions which should go into record proper, see post, § 713.

**§ 592. Effect of failure to make abstract or brief.**

*Cross-References.*

Dismissal on court's own motion, see post, § 792.  
Effect of failure to file in time, see post, §§ 627-630.  
Effect of failure to make proper abstract or brief, see post, § 639.  
Limitation of review by abstract or brief, see post, § 671.

**(F) MAKING, FORM, AND REQUIREMENTS OF TRANSCRIPT OR RETURN.**

*Cross-References.*

Amendment in appellate court in general, see post, § 653.  
Authentication and certification of transcript or return, see post, § 612.  
Conclusiveness, see post, § 662.  
Defects or errors amendable, see post, § 645.  
Effect of errors in making transcript or return, see post, § 640.  
Effect of failure to file in time, see post, §§ 627-630.  
Effect of including unnecessary matter, see post, § 636.  
Effect of loss or destruction of record, see ante, § 543.  
Effect of omissions, see post, § 635.  
Impeaching or contradicting, see post, §§ 667-670.  
Mode and sufficiency of filing, see post, § 625.  
Necessity and duty of filing, see post, § 619.  
Payment of costs or fees for transcript or return as condition precedent to appeal, see ante, § 371.  
Presumptions as to making and contents, see post, § 939.  
Printing, see post, § 631.  
Remitting to lower court for amendment or correction, see post, § 657.  
Service of copies, see post, § 632.  
Striking out in appellate court, see post, § 635.  
Supplying omissions, see post, § 654.  
Time for filing, see post, §§ 621-624.  
Time for objections, see post, § 643.  
Time to amend, see post, § 643.  
Waiver of defects or objections, see post, § 644.  
Withdrawal from files, see post, § 630.  
Criminal prosecutions, see "Criminal Law," § 1104.  
Expenses of transcript as items of costs, see "Costs," §§ 254-256.  
Fees of clerk of United States court for making return to order contained in writ of error, see "Clerks of Courts," § 50.  
Fees of court stenographers for transcripts, see "Courts," § 57.  
In divorce suits, see "Divorce," § 183.

**§ 593. Purpose and functions.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 594. Necessity.**

*Cross-References.*

Effect of failure to make, see post, § 611.  
Substitutes, see post, § 610.

(a) It is the duty of the appellant to have a transcript of the record duly prepared and transmitted to the appellate court within the prescribed time.—Duvall

*v. Maryland Electric Rys. Co.*, 114 Md. 298, 79 Atl. 192.

**§ 595. Necessity for separate transcript on separate appeals and cross-appeals.**

*Cross-References.*

Annexing cross-errors to record of adversary, see post, § 747.  
Certification, see post, § 612.  
Remitting to lower court for correction, see post, § 657.

**§ 596. Duty to make.**

*Cross-References.*

Duty to file, see post, § 619.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 597. Record or part thereof included.**

*Cross-References.*

Proceedings for preparation, see post, § 607.  
Sufficiency, see post, § 608.  
Necessity and sufficiency of showing in record in general, see ante, § 494.

(a) Under Code, art. 5, § 34, relating to equity proceedings, it is the duty of the clerk in preparing a transcript, on appeal, to omit irrelevant and immaterial matters and to determine the question of materiality by conference with the attorneys for the parties or the trial court.—*Middendorf v. Baltimore Refrigerating & Heating Co.*, 117 Md. 443, 84 Atl. 150.

(b) Upon appeal from an order granting an injunction, it is proper, under Code, art. 5, § 39, that the transcript of the record transmitted to the appellate court should include the proceedings subsequent to the bill and exhibits.—*Blackburn v. Craufurd*, 22 Md. 447.

**§ 598. Original papers.**

*Cross-References.*

Authentication and certification, see post, § 616.  
Effect of stipulations, see post, § 604.  
Incorporating original bill of exceptions, see post, § 600.

(a) The original papers offered in evidence in the trial court should not be brought before the reviewing court or the Court of Appeals without being embodied in the record.—*De Riesthal v. Walton*, 66 Md. 470, 8 Atl. 462.

**§ 599. Papers not of record or on file.**

**§ 600. Incorporating bill of exceptions.**

*Cross-References.*

Compliance with præcipe, see post, § 607.  
Stipulations as to use of original bill of exceptions, see post, § 604.

**§ 601. Incorporating case or statement of facts.**

**§ 602. (Omitted from this title in the classification used herein.)**

**§ 603. Special orders as to contents.**

*Cross-Reference.*

Special orders as to contents of record in general, see ante, §§ 534, 538.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 604. Stipulations as to contents.**

*Cross-Reference.*

Stipulations as to contents of record in general, see ante, § 539.

(a) On an appeal to a circuit court from an orphans' court, the parties may, by agreement, dispense with a full transcript, and, when the orphans' court and the circuit court do not object, use the original evidence, or such parts as they need; and if the circuit court passes upon the transcript thus before it, and upon the original evidence submitted by consent of both parties, its determination cannot be afterwards impeached by either of the parties to the agreement, because everything was not embraced in the transcript.—*State v. McCarty*, 64 Md. 253, 1 Atl. 116.

**§ 605. Form and arrangement.**

*Cross-Reference.*

Printing, see post, § 631.

**§ 606. Index and marginal notes.**

*Cross-References.*

Dismissal for failure to make in general, see post, § 640.  
Dismissal on court's own motion, see post, § 792.

No paragraphs in this digest. For cases in other states, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 607. Proceedings for preparation.**

*Cross-References.*

Incorporation in general, see ante, § 600.  
Time to make objections, see post, § 643.

(a) Where counsel in a suit in equity fail to agree on what shall be inserted in the record on appeal, the record must be made up as provided by Code, art. 5, § 34, and the trial judge may direct appellant's solicitor to submit a statement to him, and, where he fails to do so, there is a default, as the right of appellant to control the record is not without limitation.—*Wilmer v. City of Baltimore*, 116 Md. 338, 81 Atl. 685.

### § 608. Sufficiency.

#### *Cross-References.*

- Effect of errors in making, see post, § 640.
- Effect of including unnecessary matter, see post, § 636.
- Effect of omissions, see post, § 635.
- Record and parts thereof to be included, see ante, § 597.
- Waiver of defects on objections, see post, § 644.
- Effect of making partial transcript, see post, § 635.

### § 609. Supplemental transcript or return.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 610. Substitutes.

#### *Cross-Reference.*

Original papers as substitute for transcript, see ante, § 598.

(a) Under Code, art. 5, §§ 39, 49, providing that on appeal the clerk of the court shall make and transmit to the Court of Appeals a transcript of the record under the seal of his office, counsel on appeal cannot dispense with a transcript of the record, and substitute therefor an agreed statement of facts.—*McDevitt v. Bryant*, 104 Md. 187, 64 Atl. 931; *Convention of Protestant Episcopal Church of Diocese of Maryland v. Same*, *Ibid*.

### § 611. Effect of failure to make transcript or return.

#### *Cross-References.*

- Effect of failure to file in time, see post, §§ 627-630.
- Effect of failure to make proper transcript or return, see post, § 640.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### (G) AUTHENTICATION AND CERTIFICATION.

#### *Cross-References.*

- Amended or corrected record, see post, § 650.
- Conclusiveness of certificate, see post, § 663.
- Effect of failure to make proper certificate, see post, § 641.
- Effect of omissions, see post, § 635.
- Impeaching or contradictory certificate, see post, §§ 667-670.
- Time for amendment, see post, § 643.
- Waiver of defects or objections, see post, § 644.
- Criminal prosecutions, see "Criminal Law," § 1105.

### § 612. Transcript or return.

#### *Cross-Reference.*

Papers included, referred to, or annexed, see post, § 616.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 613. Bill of exceptions.

(a) A bill of exceptions without the seal cannot be considered.—*Lancaster v. Herbert*, 74 Md. 334, 22 Atl. 139.

(b) The first exception was not signed, but the second, which was signed, referred to the first as stating all the necessary facts. *Held*, that the defect was thereby cured.—*Hopkins v. Kent*, 17 Md. 113.

### § 614. Case, statement of facts, or certificate of evidence.

#### *Cross-References.*

- Certificate of approval or allowance, see ante, §§ 569, 574.
- Procuring and filing certificate of evidence, see ante, § 574.

### § 615. Abstract or brief of evidence.

### § 616. Papers included, referred to, or annexed.

#### *Cross-Reference.*

Assignment of errors, see post, § 745.

### § 617. Alteration of certificate.

### § 618. Supplemental certificate.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### (H) TRANSMISSION, FILING, PRINTING, AND SERVICE OF COPIES.

#### *Cross-References.*

- Amended or corrected record, see post, § 650.
- Filing case or statement of facts in lower court, see ante, § 573.

Time for objections, see post, § 643.

Waiver of defects or objections, see post, § 644.

Criminal prosecutions, see "Criminal Law," §§ 1106-1108.

Following state statutes and practice in federal courts, see "Courts," § 356.

On appeal from municipal courts, see "Courts," § 190.

On appeal to Court of Appeals of District of Columbia, see "Courts," § 445.

### § 619. Necessity and duty of filing in appellate court.

#### *Cross-Reference.*

Penalty for failure of clerk to transmit transcript, see "Clerks of Courts," § 72.

(a) Where a record has not been transmitted to the appellate court under a writ of error, that court will lay a rule on the plaintiff in error and clerk of the court to which the writ was directed to show cause.—*Bourne v. Mackall*, 1 H. & G. 86.

### § 620. Time for transmission and filing.

#### *Cross-References.*

Additional or counter abstract of appellee see ante, § 585.

Effect of abandonment of appeal, see post, § 806.

Effect of failure to file in time, see post, §§ 627-630.

Filing in lower court, see ante, § 564.

Perfecting and transmission after transfer of cause, see ante, § 441.

Retroactive operation of statute, see ante, § 2.

Time for amendment, see post, § 643.

Time for filing proposed case or statement, see ante, § 564.

Computation of time, see "Time," §§ 9, 10.

### § 621.— Limitations applicable.

(a) Though the subject-matter in controversy is the distribution of an insolvent's estate, an appeal from a decree in a court of equity is governed by Code, art. 5, § 33, which allows three months from the date of appeal in which to transmit the records to the Court of Appeals, rather than article 47, § 31, which requires records in insolvency proceedings to be transmitted within 60 days.—*Cross v. Hecker*, 75 Md. 574, 24 Atl. 99.

(b) On appeal from a decree of the chancery court, the record, under the act of 1826, must be transmitted to the Court of Appeals within 40 days, or the appeal will be dismissed on motion.—*Prout v. Berry*,

12 G. & J. 285. (For present law, see Code, art. 5, § 33.)

### § 622.— Commencement of period of limitation.

### § 623.— Computation of time.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 624.— Extension of time.

#### *Cross-Reference.*

Effect of failure to file within extended time, see post, § 627.

(a) Under rule 2 of the Court of Appeals, as amended by rule 27 (see Code, art. 5, § 6), which provides that the time for the transmission of the record runs from the date of the order allowing the writ of error, a writ will not be dismissed where judgment was rendered April 1st, and the petition for the writ filed on the 11th, allowed on June 13th, and transmitted to the Court of Appeals September 5th.—*Gamble v. Sentman*, 68 Md. 71, 11 Atl. 584.

### § 625. Mode and sufficiency of transmission and filing.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 626. Failure to file in time.

#### *Cross-References.*

Additional or counter abstract of appellee, see ante, § 585.

Dismissal for want of prosecution, see post, § 787.

Filing in lower court, see ante, § 564.

On appeal to United States Circuit Court of Appeals, see "Courts," § 405.

### § 627.— Effect in general.

#### *Cross-References.*

As abandonment of appeal, see post, § 805.

On review in United States Circuit Court of Appeals, see "Courts," § 405.

Dismissal on court's own motion, see post, § 792.

Filing transcript before hearing of motion to dismiss, see post, § 800.

Necessity of notice of motion to dismiss, see post, § 798.

Reinstatement, see post, § 807.

Time to move for dismissal, see post, § 797.

(a) Where appellant, for more than four months after the expiration of the time for the transmission of the record to the Court of Appeals, did nothing to perfect



the appeal and the inaction was unexplained, the appeal will be dismissed.—*Wilmer v. City of Baltimore*, 116 Md. 338, 81 Atl. 685.

(b) The prayer for an appeal was entered July 25th. The appeal bond was filed September 25th following. Since September 24th, a complete copy of the declaration and testimony in the case had been made, and the record substantially prepared, and the cost thereof definitely fixed. Appellant gave no direction to the clerk to transmit the record to the Court of Appeals until November 10th following, when the costs were paid and direction given. *Held*, that, since appellant must ascertain when the record is made out, and must pay for it in time for its transmission before the expiration of the three months fixed by Code, art. 5, § 6, the failure to transmit the record to the Court of Appeals within the three months was due to appellant's negligence, necessitating the dismissal of the appeal.—*Maryland, D. & V. Ry. Co. v. Hammond*, 110 Md. 124, 72 Atl. 650.

(c) Where it does not appear that by proper diligence the record could not have been made up and transmitted to the Court of Appeals within three months after appeal prayed, as required by Code, art. 5, § 33, relating to equity cases, the appeal will be dismissed.—*Estep v. Tuck*, 109 Md. 528, 72 Atl. 459.

(d) Where more than three months have elapsed between the date of entry of an appeal from a decree in equity and the date of transmission of the record, the appeal must be dismissed, unless appellant affirmatively shows that the delay in transmitting the record was caused either by the neglect, omission or inability of the clerk or appellee.—*Stein v. Harding*, 88 Md. 343, 41 Atl. 799.

(e) An appeal from an order as to which the record is not sent up for more than a year after the order was passed, where the delay was caused by the appellant, and not by the fault of the clerk, will be dismissed.—*Crise v. Lanahan*, 11 Atl. 842. (Not reported in Maryland Reports.)

(f) Failure to file the transcript within

the time prescribed by statute or rule is ground for dismissal, unless cause be shown for the delay.—*Prout v. Berry*, 12 G. & J. 285; *Mince v. Tucker*, 37 Md. 362; *Ewell v. Taylor*, 45 Md. 573; *Downes v. Friel*, 57 Md. 531; *Mason v. Gauer*, 62 Md. 263.

(g) The remedy provided by act 1864, c. 322 (Code, art. 5, § 41), authorizing the lower court, in case the record is not transmitted to the appellate court within the time prescribed in the act, to proceed to execute the judgment as if no appeal had been taken, is cumulative, and in no manner interferes with the right of the appellee to have the record sent up to the Court of Appeals, if the appellant neglects to have it done within the time prescribed by law.—*Rau v. Bennis*, 49 Md. 316.

(h) A petition to the Court of Appeals asking that the appeal be dismissed because of the failure of the appellant to cause a transcript to be transmitted to the court within the required time will be dismissed, as the relief asked by the petitioner might be had by application to the circuit court from which the appeal was taken, under the provisions of act 1864, c. 322 (Code, art. 5, § 41).—*Meloy v. Squires*, 39 Md. 175.

(i) If an appeal be taken in time, delay in transmission of the transcript of record to the upper court affords no ground for dismissing the appeal, unless it appear affirmatively that such delay is by default of the appellant.—*City of Baltimore v. Reynolds*, 18 Md. 270.

(j) An appeal taken in due time will not be dismissed because of delay in transmitting the record to the appellate court, where appellant is not in default.—*Dugan v. Hollins*, 11 Md. 41.

#### § 628.—Excuses for delay.

(a) The failure to transmit transcript of the record within the time prescribed, *held* not to justify dismissal, it appearing that the delay was partly due to the absence of appellee's counsel from the city.—*State v. Baltimore & O. R. Co.*, 117 Md. 280, 83 Atl. 166.

(aa) Excuse for the record on appeal not

being transmitted to the Court of Appeals within three months from the time of the appeal, as required by Code, art. 5, § 33, in the absence of "delay occasioned by the neglect, omission or inability of the clerk or appellee," which section 40 provides shall not be presumed, but which, being shown by appellant, shall prevent dismissal of the appeal, is not shown by the fact that the clerk, who withheld it, as was his right, till the costs for its preparation were paid, omitted to demand the costs within the time prescribed for the transmission, and that it had been the practice of the prior clerk, who had gone out of office a year before, to transmit records without such prepayments.—*Horpel v. Hawkins*, 115 Md. 156, 80 Atl. 842.

(b) Where the transcript was not filed for six months, the appellant could not excuse his delay under court rule 16 (Code, art. 5, § 40), which excuses the appellant for delays caused by appellee, by showing that the appellee retained the typewritten copy of the testimony nearly three months, for that would not excuse the appellant's delay in taking three months more in which to transmit the transcript.—*Duvall v. Maryland Electric Rys. Co.*, 114 Md. 298, 79 Atl. 192.

(bb) An appeal will not be dismissed for delay in transmitting the transcript of the record, where it would have been transmitted in time but for requests of counsel for both parties for further insertions, and the clerk's inability to make them in time.—*Forest Lake Cemetery of Prince George's County v. Baker*, 113 Md. 529, 77 Atl. 853, 858.

(c) If appellant promised to designate what should be included in the record, and did not do so until it was too late to transmit the transcript in time, that he incorporated a formal direction for the transmission of the record in his prayer of appeal would not excuse his omission, so as to prevent dismissal.—*Warburton v. Robinson*, 113 Md. 24, 77 Atl. 127.

(cc) Preponderance of evidence held not to show that appellant's failure to file the record within the required time was not

his own fault, and was due to the neglect of the clerk.—*Warburton v. Robinson*, 113 Md. 24, 77 Atl. 127.

(d) Code, art. 5, § 40, prohibiting dismissal because a transcript is not transmitted within the required time, if the delay was caused by the neglect of the clerk or appellee, but requiring such neglect to be shown by appellant, imposes on him the burden of showing that the failure to transmit the record within the required time was caused by the fault of the clerk or appellee; it being otherwise presumed that appellant caused the delay.—*Warburton v. Robinson*, 113 Md. 24, 77 Atl. 127.

(dd) The fact that the transcript of record was not transmitted to the Court of Appeals within three months from the time of the taking of the appeal, as required by Code, art. 5, § 6, is prima facie evidence of appellant's fault, and he must show that the delay, was due to the negligence, omission, or inability of the clerk or appellee.—*Maryland, D. & V. Ry. Co. v. Hammond*, 110 Md. 124, 72 Atl. 650.

(e) Code, art. 5, § 33, requires all transcripts of record on appeals from equity courts to be transmitted to the Court of Appeals within three months after the appeal is prayed, and section 40 prohibits the dismissal of an appeal for failure to transmit in time, if the delay was caused by the neglect, etc., of the clerk or appellee; but such neglect, etc., must be shown by appellant. An equity appeal was entered April 15th, and the record was not received by the clerk of the Court of Appeals until October 1st. Appellant's affidavit to explain the delay showed that on June 12th appellant's counsel, who resided in Baltimore, wrote to the clerk of the trial court, residing at Leonardtown, inclosing a stipulation with appellee's counsel as to what the transcript should contain, the trial court then having the papers, which were not returned to the clerk's office until several weeks later, and, on July 13th, appellant's counsel wrote the clerk requesting the clerk to let him see the record before sending it up, and it was forwarded to him at Baltimore, September 9th, and returned

to the clerk September 24th, and forwarded to the Court of Appeals October 1st. *Held*, that as it did not appear that the record could not have been transmitted during the first three months after appeal taken, and because of the further delay from counsel's request to inspect the record, and that caused by his residence away from the place of trial, the affidavit did not show that by diligence the record could not have been transmitted in time.—*Estep v. Tuck*, 109 Md. 528, 72 Atl. 459.

(ee) A stipulation between appellant's and appellee's counsel as to what the record should contain did not amount to an agreement for delay in transmitting the record.—*Estep v. Tuck*, 109 Md. 528, 72 Atl. 459.

(f) Under Code, art. 5, § 40, prohibiting the dismissal of an appeal because the record was not transmitted within the required time, if it appears that the delay was caused by the neglect, omission, or inability of the clerk or appellee, and providing that such neglect, etc., shall not be presumed, but must be shown by appellant, the burden is on appellant to show that the delay was not caused by his own fault, but by neglect, etc., of the clerk or appellee.—*Estep v. Tuck*, 109 Md. 528, 72 Atl. 459.

(ff) Appeal will not be dismissed because the record was not transmitted to the Court of Appeals within three months from the taking of the appeal, an affidavit of the deputy clerk of the trial court, in charge of the preparation of the record, that the delay was due to a press of work, and his consequent inability to comply with the rule of the Court of Appeals being filed.—*O'Sullivan v. Buckner*, 107 Md. 33, 68 Atl. 356.

(g) An appeal from an order overruling exceptions to an administrator's account will not be dismissed for failure to transmit the record within the statutory period, where, before the hearing of the appeal, appellant filed with the clerk an affidavit by the deputy register of wills of the county from which the appeal was taken that the delay was the fault of the register of wills, owing to unavoidable causes occurring in his office, and was not attributable to the laches of appellant or his attorney.—*Koenig v. Ward*, 104 Md. 564, 65 Atl. 345.

(gg) Appeal will not be dismissed for delay in sending up the transcript, occasioned by inability of the register of wills, because of sickness, to make up the record.—*Maynadier v. Armstrong*, 98 Md. 175, 56 Atl. 357; *Armstrong v. Maynadier*, *Ibid*.

(h) Where the attorney for appellant paid the costs of the case the day after he was notified by the clerk that the record had been completed, and the record was immediately sent to the appellate court, the appeal will not be dismissed for failure to file the record at an earlier date.—*Cahill v. City of Baltimore*, 93 Md. 233, 48 Atl. 705.

(hh) Under Code, art. 5, § 40, providing that no appeal shall be dismissed for failure to file the transcript caused by the neglect or omission of the clerk or the appellee, the uncontradicted affidavit of the register of wills that his failure to transmit certain records on appeal within the time allowed was due to great press of business in his office was sufficient to prevent a dismissal of the appeal therefor.—*Miller v. Gehr*, 91 Md. 709, 47 Atl. 1032.

(i) That the transcript of a record on appeal was not sent to the appellate court within three months from the date of the appeal was not ground for dismissing the appeal, where affidavits of the clerk of the court from which the appeal was taken, and of his deputy, not controverted, exonerated the appellant from fault in the delay.—*Ellinger v. City of Baltimore*, 90 Md. 696, 45 Atl. 884.

(ii) Where it does not appear from the affidavits of the deputy clerk, whose duty it was to prepare and transmit the record, that the delay was by the direction or with the knowledge of appellant's attorneys, but it appears from affidavits of appellants' attorneys that neither of them directed or requested any delay, but one of them several times urged the deputy clerk to prepare the record and not to fail to transmit it in due time, a motion to dismiss the appeal on the ground that the record was not transmitted to the appellate court within three months from the time the appeal was taken will be overruled.—*Brown v. Ravenscraft*, 88 Md. 216, 44 Atl. 170.

(j) The "omission or neglect" of the clerk of the court in transmitting the record, which will prevent the dismissal of an appeal, though the record is not filed in time (Code, art. 5, §§ 33, 40), relates solely to unwarrantable and improper acts of the clerk; and hence, where the clerk made up the record in due time, and then, in pursuance of a conversation with appellant's attorney, notified him that it was ready for his inspection, and the latter replied he would call in about it, which he did not do until the time for transmitting it had expired, there is no such omission or neglect on the part of the clerk as to excuse the delay.—*Steiner v. Harding*, 88 Md. 343, 41 Atl. 799.

(jj) Under the sixteenth rule of the appellate court, an appeal from an orphans' court will not be dismissed because the transcript has not been filed in time, where there are uncontradicted affidavits by the register of wills that the delay was caused entirely by his failure to prepare the transcript in time.—*Baldwin v. Mitchell*, 86 Md. 379, 38 Atl. 775.

(k) An appeal will not be dismissed, on motion of appellee, because the transcript was not filed within the statutory time, where counsel on both sides, during the time for filing the same, stipulated for an extension of the time, as appellee thereby became a participant in the delay.—*Hopper v. Beck*, 83 Md. 647, 34 Atl. 474.

(l) Under rule 13 (Code, art. 5, § 52), requiring the record, on appeal from the orphans' court, to be transmitted within 30 days after the praying of an appeal, the appellate court will, of its own motion, dismiss an appeal, no excuse being made for a delay of two years in transmitting the record, though counsel stipulate to take no advantage of the delay.—*Powell v. Curtis*, 78 Md. 499, 28 Atl. 390.

(m) Where the clerk's affidavit to the transcript certifies that the delay in its transmission was caused by his own inadvertence and omission, the court will not dismiss the appeal on the ground of such delay.—*Bixler v. Sellman*, 77 Md. 494, 27 Atl. 137.

(n) Where it appears that the failure to send up the record within the time prescribed by law was the fault of the clerk of the court below, a motion to dismiss the appeal will be overruled.—*Glenn v. Chesapeake Bank*, 3 Md. 475; *Andrews v. Poe*, 30 Md. 485; *Garritee v. Popplein*, 73 Md. 322, 20 Atl. 1070.

(o) An appeal will not be dismissed for failure to transmit the record within the prescribed time, where such failure is due to the inability of the register to complete it sooner.—*Hardt v. Birely*, 72 Md. 134, 19 Atl. 606.

(p) It is not the duty of the clerk of the circuit court to notify appellant when the transcript of the record is completed, and to demand his fees therefor, so as to excuse an appellant from failure to transmit the record in the required time.—*Parsons v. Padgett*, 65 Md. 356, 4 Atl. 410.

(q) Under rule 13 of the Court of Appeals (Code, art. 5, § 62), where the delay to transmit within 30 days a record on appeal from an orphans' court is referable to the register, the appeal will not be dismissed.—*Biddison v. Mosely*, 57 Md. 89.

(r) Failure to transmit a record to the Court of Appeals within the prescribed time, due to the refusal of the clerk to make up the record until he is paid for it, is no ground for dismissing the appeal.—*Walter v. Second Nat. Bank*, 56 Md. 138.

(s) The certificate of a clerk, under the seal of his office, "that the delay of sending up the record in this cause has been in no way attributable to the defendant," the party who appealed, is not admissible to prove that the appellant was without fault.—*Northern Cent. Ry. Co. v. Rutledge*, 48 Md. 262.

(t) Where the transcript of the record on appeal was not made out and transmitted to the Court of Appeals within the time prescribed therefor, and the clerk is not in default, a very strong case must be made out by the appellant, to rebut the presumption of laches on his part. He must satisfy the court that, by proper diligence, a correct record could not have been made

out and transmitted in time.—*Ewell v. Taylor*, 45 Md. 573.

(u) An appeal will not be dismissed because the transcript of the record of proceedings in the case was not transmitted to the Court of Appeals within the time prescribed by law, if it be shown that the failure to transmit was occasioned by the inadvertence of the clerk in misplacing the original papers.—*Lewin v. Simpson*, 38 Md. 468.

(v) A motion to dismiss an appeal, on the ground that the transcript of the record was not transmitted to the appellate court within the time prescribed by statute, should not prevail if it be shown that the delay was not caused by the laches of the appellant.—*Hooper v. Baltimore & Y. Turnpike Road*, 34 Md. 521.

(w) Where the record shows that judgment was rendered and the exception signed on June 5th, and an appeal was taken on the 21st of the same month, and, being thus in time, a delay in the transmission of the record being apparently the fault of the clerk, and not of the appellant, such appeal will be considered.—*Allender v. Susan*, 33 Md. 14, 3 Am. Rep. 171.

(x) Under Acts 1814, c. 322, providing that a party will lose his right of appeal if, by his neglect, the record shall not be transmitted within nine months after the appeal was entered, an appellant will not be denied his right of appeal, because the record of the case was not transmitted to the Court of Appeals within the time prescribed, when it appears that the record was not prepared, by the clerk of the court, for transmission within that time.—*O'Hern v. Browning*, 33 Md. 471. (For present law as to transmission of record, see Code, art. 5, §§ 6, 33.)

(y) Delay in transmitting the record is no ground for dismissing an appeal, where the delay seems to be equally attributable to the appellees as to the appellant.—*McGonigal v. Plummer*, 30 Md. 426.

(z) The original papers in a cause, having been taken out of the clerk's office of the court below by the counsel for the appellant, were by accident or inadvertence

not returned, so as to enable the clerk to made up and transmit the record to the Court of Appeals within the time prescribed by law. *Held*, that under such circumstances the appellant, and not the clerk, was answerable for the consequences of the delay, and that the appeal must be dismissed.—*Sample v. Motter*, 5 Md. 368.

#### § 629.—Relief.

#### § 630. Loss, destruction, or withdrawal from files.

##### *Cross-References.*

Loss of records of trial court, see ante, § 543.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 631. Printing.

##### *Cross-References.*

Dispensing with printing on second appeal, see post, § 1096.

Printing briefs, see post, § 764.

Act providing that transcripts on appeal may be printed or typewritten as encroachment on judiciary, see "Constitutional Law," § 55.

Rules of United States Circuit Court of Appeals, requiring printing, see "Courts," § 402.

(a) Rule 34 of the Court of Appeals requires the cost of printing the transcript of the record to be paid by appellant within ten days of receipt of notice of the amount from the clerk, but does not provide any penalty, by dismissal of the appeal or otherwise, for noncompliance with the rule. Rule 36, § 2, requiring counsel to furnish copies of their briefs to opposing counsel not less than three days before the case is called for argument, provides that on failure of either party to comply with such section, the one not in default may have the case continued at the cost of the other party, or may proceed with the oral argument, etc., but does not authorize the dismissal of the appeal for such default. *Held*, that where failure to pay the printing costs in time occasioned no delay and did not interfere with the preparation of briefs or prevent their exchange before the case was called, the appeal will not be dismissed for such failure.—*City of Havre de Grace v. Fletcher*, 112 Md. 562, 77 Atl. 114.

(b) The record need not have been printed

at the time the case was set for hearing, if it was printed when the case was called for hearing.—*Bragunier v. Penn*, 79 Md. 244, 29 Atl. 12.

### § 632. Service of copies.

#### *Cross-References.*

Serving proposed case or statement, see ante, § 565.

Action in which county is party, see "Counties," § 227.

Computation of time, see "Time," §§ 9, 10.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 633. Effect of failure to print or serve copies.

#### *Cross-References.*

See ante, § 631.

(a) An appeal would not be dismissed for appellant's failure to pay the cost of printing the record within 10 days from the receipt of the statement of costs from the clerk as required by rule 34 (80 Atl. xii), where the record was in fact printed and ready when the cause was called for argument.—*Turner v. Egan*, 116 Md. 24, 81 Atl. 877.

### (I) DEFECTS, OBJECTIONS, AMENDMENT, AND CORRECTION.

#### *Cross-References.*

Amendment of defect of parties, see ante, § 836.

Dismissal on court's own motion for defects, see post, § 792.

Examination of record on motion to dismiss, see post, § 801.

Ground for rehearing, see post, § 832.

Matters to be shown by record in general, see ante, §§ 493-515.

Showing as to grounds for dismissal, see post, § 795.

Time to move for dismissal, see post, § 797.

Criminal prosecution, see "Criminal Law," §§ 1109, 1110.

Defective or confused abstract or transcript as affecting costs, see "Costs," § 255.

Including unnecessary matter in record as affecting costs, see "Costs," § 256.

In district courts in cities, see "Courts," § 194.

On appeal from municipal courts, see "Courts," § 190.

### § 634. Effect of defects in general.

(a) It is no ground for dismissal of appeal that appellants paid for no part of the

record, or that they insisted on the inclusion therein of immaterial matters, it having been printed and transmitted.—*Maynadier v. Armstrong*, 98 Md. 175, 56 Atl. 357; *Armstrong v. Maynadier*, *Ibid*.

### § 635. Effect of omissions.

#### *Cross-References.*

Consideration of matters not included or shown, see post, § 712.

Effect of omissions on review, see post, § 671.

Effect of striking out bill, case or statement, see ante, § 555.

Failure to make bill, case or statement, see ante, § 554.

Sufficiency of partial transcript in general, see ante, § 608.

Supplying omissions in appellate court, see post, § 654.

(a) Respondent's remedy in case of an omission from the appeal record is to apply for a writ of diminution and not to move to dismiss.—*Middendorf v. Baltimore Refrigerating & Heating Co.*, 117 Md. 443, 84 Atl. 150.

(b) Where an order of court directed that a certain court rule be inserted in, and made a part of, a bill of exceptions, such rule having been inadvertently omitted, and it being understood by court and counsel that it should be incorporated in such bill, and in making up the record the wrong rule was inadvertently inserted, but the right one was supplied by appellant's brief, the court would regard the omitted rule as being in the record.—*Griffith v. Adams*, 95 Md. 170, 52 Atl. 66.

(c) Where the record on appeal contains no judgment entry, the appeal will be dismissed.—*Heiskell v. Rollins*, 81 Md. 397, 32 Atl. 249.

(d) Under Code, art. 5, § 8, relating to appeals under the insolvent law, the omission of the certificate of the judge as to the points decided is fatal, and the appeal will be dismissed.—*Wright v. Kuhn*, 20 Md. 421.

(e) An appeal in proceedings for distribution of a fund in court will be dismissed where there is no proof in the record of the claims of the appellants.—*Pannell v. Farmers' Bank of Maryland*, 7 H. & J. 202.

**§ 636. Effect of including unnecessary matter.**

*Cross-References.*

Matters improperly included, see post, § 713.

Striking out, see post, § 655.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 637. Defects or errors in making bill of exceptions.**

*Cross-References.*

Effect of failure to make, see ante, § 554.

Effect of including unnecessary matter, see ante, § 636.

Effect of omissions, see ante, § 635.

Limitation of review by, see post, § 671.

Scope and sufficiency, see "Exceptions, Bill of," §§ 1-30.

**§ 638. Defects or errors in making case or statement.**

*Cross-References.*

Effect of failure to make, see ante, § 554.

Effect of including unnecessary matter, see ante, § 636.

Effect of omissions, see ante, § 635.

Limitation of review by, see post, § 671.

Scope and sufficiency, see ante, § 552.

**§ 639. Defects or errors in making abstract or brief of evidence.**

*Cross-References.*

Effect of failure to make, see ante, § 592.

Effect of including unnecessary matter, see ante, § 636.

Effect of omissions, see ante, § 635.

Limitation of review by, see post, § 671.

Scope and sufficiency in general, see ante, § 586.

**§ 640. Errors in making transcript or return.**

*Cross-References.*

Effect of failure to file, see post, § 787.

Effect of failure to make transcript or return, see ante, § 611.

Effect of including unnecessary matter, see ante, § 636.

Effect of omissions, see ante, § 635.

Sufficiency in general, see ante, § 608.

**§ 641. Defects in authentication or certificate.**

*Cross-References.*

Defects in certificate of trial judge to bill of exceptions, see ante, § 637.

Effect of omissions, see ante, § 635.

Necessity and sufficiency in general, see ante, §§ 612-618.

**§ 642. Amendment or correction in general.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 643. Time to amend or to make objections.**

*Cross-References.*

Amendment of abstract, see ante, § 590.

Before signing of record, see ante, § 569.

Curing defects before hearing of motion for dismissal, see post, § 800.

Curing defects in transcript after dismissal, see post, § 803.

Time for filing supplemental transcript or return, see ante, § 609.

(a) On a proper showing, an appellant may be allowed to perfect a transcript of appeal, even after the argument of the case has been gone into.—*Mitchell v. Smith*, 2 Md. 270.

**§ 644. Waiver of defects or objections.**

**§ 645. Defects or errors amendable.**

*Cross-References.*

Assignment of errors, see post, § 745.

Omissions which may be supplied by certiorari or other proceeding to bring up record, see post, § 659.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 646. Stipulations for amendment.**

*Cross-Reference.*

Stipulations as to contents, see ante, § 539.

(a) While agreements of counsel to amend the record, so as to present the same case to the Court of Appeals as that heard below, are always permitted, counsel will not be allowed to make agreements to amend the record, so as to present to the Court of Appeals a case that was not before the court below.—*Philadelphia, W. & B. R. Co. v. Shipley*, 72 Md. 88, 19 Atl. 1.

(b) The record of a case cannot be amended, by agreement of counsel, in the appellate court, by changing the amount for which the judgment was rendered, so as to make it appear that the judgment was within the jurisdiction of the court below.—*Armstrong v. Hagerstown*, 32 Md. 54.

(c) Where the judgment of the court below, brought up for review by appeal, is on a demurrer, an agreement to amend the record, as to facts, made in the appellate court, cannot be noticed.—*Parrish v. State*, 14 Md. 238.

### § 647. Amendment or correction in lower court.

#### *Cross-References.*

Amendment of record of trial court, see ante, § 440.  
 Effect of transfer of cause on powers of lower court in general, see ante, § 441.  
 Loss of record, see ante, § 543.  
 Of abstract or brief of evidence before transmission, see ante, § 590.  
 Of case or statement before commission, see ante, §§ 566, 569.  
 Remitting record to lower court, see post, § 657.  
 Supplying lost records, see ante, § 630.  
 Amendment of bill of exceptions before transmission of record, see "Exceptions, Bill of," § 59.  
 Supply lost or destroyed records, see "Records," § 17.

### § 648.— Authority.

(a) A nunc pro tunc order after appeal showing defendants' joinder of issue on certain pleas was not objectionable where there was nothing to show any exception or objection thereto at the trial, or any proceeding which would authorize a review thereof; there being nothing to show that issue was not so joined.—*Koch v. Wimbrow Bros.*, 111 Md. 21, 73 Atl. 896. [*Cited and annotated in 31 L. R. A. (N. S.) 207, 214, on power of trial court to correct record after appeal or writ of error.*]

### § 649.— Proceedings.

### § 650.— Certifying, transmitting, and incorporating amendment.

### § 651.— Operation and effect.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 652. Amendment in appellate court.

#### *Cross-References.*

Amendment of proceedings of lower court, see post, §§ 886-889.  
 On review in United States Circuit Court of Appeals, see "Courts," § 405.

### § 653.— Authority.

(a) The Court of Appeals has the right to verify or correct the printed record by referring to the original dockets, under Code, art. 5, § 52.—*Bowman v. Little*, 101 Md. 273, 61 Atl. 223, 657, 1084.

### § 654.— Supplying omissions.

#### *Cross-References.*

By certiorari, see post, § 659.  
 Effect of omissions in general, see ante, § 635.

### § 655.— Striking out.

#### *Cross-References.*

Effect of including unnecessary matter in general, see ante, § 636.  
 Effect of striking out bill, case, or statement, see ante, § 555.  
 Failure to make and file or serve case or statement in time, see ante, § 564.

### § 656.— Correcting or curing errors or defects.

#### *Cross-Reference.*

Time for correction, see ante, § 643.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 657. Remitting to lower court.

#### *Cross-Reference.*

To supply lost records, see ante, § 543.

(a) Where the presence of papers in the record on appeal would throw no light on the issues raised by the appeal, an application for a writ of diminution to correct the record by supplying the papers will be denied.—*Watson v. McHenry*, 107 Md. 245, 68 Atl. 606.

(b) Where a declaration stated a good cause of action against a demurrer, an application for a writ of diminution to correct the record by supplying copies of the docket entries to show that a demurrer was filed and overruled will be denied.—*Watson v. McHenry*, 107 Md. 245, 68 Atl. 606.

(c) A writ of diminution will not be granted for the correction of errors in statements inserted in bills of exception by the trial judge as to admissions of the parties or their counsel, made in open court, unless he suggests to the appellate court a desire to make such correction.—*Watson v. McHenry*, 107 Md. 245, 68 Atl. 606.

(d) Where an appeal was taken December 19, 1899, and appellee filed a transcript of the record January 8, 1900, and procured the cause to be docketed for the January, 1900, term of the court, the time allowed by law and the rules of court to appellant to perfect his appeal and transmit the transcript had not expired; and hence appellant was entitled to have the case stricken from the docket on motion, and remanded to the trial court, in order that he might prepare



and transmit the record on his own account.—*Carroll v. Hutton*, 90 Md. 636, 45 Atl. 886.

(e) Where the record transmitted to the Court of Appeals is exceedingly defective, containing neither the original bill, the order thereon for injunction, nor the answers of some of the defendants, and is entirely destitute of all proof, and where it does not appear from it that any proof was taken, and where it appears that the main object of the appeal seems to be to obtain the construction of a certain will, the Court of Appeals can neither affirm nor reserve the decree appealed from, but must remand the cause, under Code, art. 5, § 38, that the omissions in the record may be supplied, and further proceedings had as authorized by the provisions of the statute referred to.—*Fulton v. Harman*, 44 Md. 251.

#### § 658. Certiorari or other proceedings to bring up record.

##### *Cross-References.*

Effect of dismissal, see post, § 803.

On motion for rehearing, see post, § 833.

#### § 659.— Authority and grounds.

##### *Cross-Reference.*

Supplying lost records below before certiorari to remove, see ante, § 543.

(a) Where essential matter is omitted from the record, the Court of Appeals, on an application for a writ of diminution, may require appellant to furnish it, and, in default, may dismiss the appeal.—*Middendorf v. Baltimore Refrigerating & Heating Co.*, 117 Md. 443, 84 Atl. 150.

(b) Where appellant brings up only a small part of a particular record in order to have his transcript filed within the time, or to avoid proper costs, the court may refuse a writ of diminution if the additional record cannot be filed within the time allowed.—*Middendorf v. Baltimore Refrigerating & Heating Co.*, 117 Md. 443, 84 Atl. 150.

(c) Under Court of Appeals rule 17, and Code, art. 5, § 42, providing that in case of cross-appeals, or of more than one appeal in the same case, there shall be but one transcript, where defendants reserved exceptions during the trial and plaintiffs ap-

pealed, the exceptions should be included in the record, and, if for good reason they were not ready when that record was made up, a writ of diminution will remedy the defect.—*Whitridge v. Pope*, 110 Md. 486, 73 Atl. 288.

(d) When the appellant is not satisfied with the record as transmitted, he has the right, under Code, art. 5, § 46, on an application for a writ of diminution, to specify in writing the parts requested to be supplied, and have them furnished.—*Schwallerberg v. Jennings*, 43 Md. 554.

#### § 660.— Proceedings.

##### *Cross-Reference.*

Time for application, see ante, § 643.

(a) Respondent's remedy in case of an omission from the appeal record is to apply for a writ of diminution and not to move to dismiss.—*Middendorf v. Baltimore Refrigerating & Heating Co.*, 117 Md. 443, 84 Atl. 150.

#### § 661.— Return.

(a) If the court be satisfied, either from its own knowledge of what has actually occurred in the progress of the cause, or from evidence adduced, that the docket entries as made by the clerk are erroneous or incomplete, the court should have such entries corrected, so that a full, true, and perfect transcript of the whole proceedings as they actually occurred in the progress of the cause may be sent up to the appellate court, in obedience to a writ of diminution. But the decision of the court in which the proceedings are had is final and conclusive as to the correctness of its own records.—*Greff v. Fickey*, 30 Md. 75.

(b) Where the clerk of the court below omitted to enter upon the record a plea in abatement, a rule to plead, and a ne recipiat ordered by the court, the court may, after an appeal, and a transmission of the record to them under a writ of diminution, order the record to be corrected and certified anew to the Court of Appeals.—*Chapman v. Davis*, 4 Gill 166.

(c) Where a writ of diminution has issued to amend the record of a cause pending in the Court of Appeals, the court from which

the appeal is taken may, upon motion, order the record to be amended, by inserting a writ therein which the clerk did not but ought to have issued.—*Bank of United States v. Lyles*, 10 G. & J. 326.

**(J) CONCLUSIVENESS AND EFFECT, IMPEACHING AND CONTRADICTING.**

*Cross-Reference.*

Criminal prosecutions, see "Criminal Law," §§ 1111, 1112.

**§ 662. Conclusiveness of record.**

(a) The rule that a record imports absolute verity and cannot be contradicted does not apply in a case where the official term of the judge who tried the case expired between the rendition of the judgment and the perfection of an appeal, and his successor in office caused amendments to be made thereto by writ of diminution.—*Hays v. Philadelphia, W. & B. R. Co.*, 99 Md. 413, 58 Atl. 439.

(b) A recital in the record on an appeal from an order partially dissolving an injunction that the cause came up on the question of the dissolution of the injunction is conclusive, on appeal, that the question of dissolution was heard in the regular and proper manner, though the appellant contends that the injunction was modified without notice or hearing.—*Wenzel v. Milbury*, 93 Md. 427, 49 Atl. 618.

(c) An official declaration by a trial judge as to the admissions of counsel on the trial must, on appeal, prevail over the statements of counsel as to his admissions.—*Maryland Ice Co. v. Arctic Ice-Machine Mfg. Co.*, 79 Md. 103, 30 Atl. 633.

(d) Where a bill of exceptions is sealed, the truth of the facts contained in it cannot afterwards be disputed.—*Mitchell v. Mitchell*, 1 Gill 66.

**§ 663. Conclusiveness of certificate.**

*Cross-Reference.*

Dismissal on court's own motion, see post, § 792.

**§ 664. Conflict in record.**

*Cross-References.*

Conflict between record and assignments of error, see post, § 751.

Conflicts in abstract or between abstracts, see post, § 665.

Remanding for new trial on conflict in record, see post, § 1106.

**§ 665. Abstracts.**

*Cross-References.*

Abstracts in general, see ante, §§ 579-592. Additional or counter abstract of appellee, see ante, § 585.

**§ 666. Impeaching or contradicting.**

**§ 667.— Grounds and extent.**

**§ 668.— Admissibility of evidence in general.**

*Cross-Reference.*

Admissibility of evidence to supplement record, see post, § 715.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 669.— Official certificates.**

*Cross-References.*

Official certificates accompanying record as part of record, see ante, § 541.

To supply matters not in record, see post, § 714.

(a) Where an exception is taken to the refusal of the court to admit certain testimony, and the bill of exceptions is signed, the trial court may certify that said testimony was subsequently admitted, and such certificate will be considered on appeal.—*Owens v. Owens*, 81 Md. 518, 32 Atl. 247.

**§ 670.— Affidavits.**

*Cross-References.*

Admissibility of affidavits to supplement record, see post, § 715.

Affidavits accompanying or supplementing record as part of record, see ante, § 542.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**(K) QUESTIONS PRESENTED FOR REVIEW.**

*Cross-References.*

Conclusiveness of record, see ante, § 662.

Extent of review in absence of bill of exceptions, case, or statement of facts in general, see ante, § 544.

Grounds and reasons for rulings, see post, § 716.

Matters to be shown by record, see ante, §§ 493-543.

Necessity of record showing presentation and reservation of grounds of review, see ante, §§ 499-502.

Presumptions as to facts or evidence not shown by record, see post, §§ 906-939.

Presumptions as to matters shown by record, see post, §§ 903, 904.

Relation of assignment of errors to record, see post, § 751.

Reversal by court on its own motion for failure to present questions by record, see post, § 1159.

Criminal prosecutions, see "Criminal Law," §§ 1114-1127.

Election contests, see "Elections," § 305.

In divorce suits, see "Divorce," § 183.

On appeal from municipal courts, see "Courts," § 190.

Practice in federal courts, see "Courts," § 356.

### § 671. Limitation by scope of record in general.

#### *Cross-References.*

Consideration of matters not included or shown in general, see post, § 712.

Necessity that grounds of review appear of record, see ante, § 497.

Effect of omission of evidence on disposition of cause, see ante, § 635.

Necessity of bringing up evidence by bill of exceptions, case, or statement, see ante, § 548.

Requisites of record as to incorporation of evidence, see ante, § 515.

Defects or errors in general, see ante, §§ 637, 638.

Effect of striking out bill of exceptions, case, or statement, see ante, § 555.

Necessity of bill of exceptions, case, or statement of facts, see ante, § 544.

(a) A judgment against a taxi company for injury to a passenger in collision with a street car, not supported by evidence of the company's ownership of the taxicab, cannot be supported by reference to the record in an independent suit brought by plaintiff's father for loss of her services on account of the same accident.—*Stewart Taxi Service Co. v. Getz*, 118 Md. 171, 84 Atl. 338.

(b) In the absence of bills of exceptions or petition designating the rulings objected to, such rulings, not shown by the record, could not be reviewed.—*Jones v. State*, 118 Md. 67, 83 Atl. 1100.

(c) Where, on appeal from an order overruling exceptions to the allowance of a claim against a corporation in the process of liquidation on the ground of insolvency, based on the ground that the claimant was a subscriber to the capital stock of the corporation, the record did not contain any agreement signed by the claimant subscribing to the stock, nor the agreement by which the claimant became an officer of the corporation, the order must be affirmed because of the inability of the court on appeal to determine the question involved.—

*Sturtevant Mill Co. v. Cosmic Cement & Stone Co. of Baltimore City*, 111 Md. 667, 76 Atl. 412.

(d) On appeal the Court of Appeals may not consider testimony stricken out by the trial judge, where neither the evidence nor a statement of its substance appears in the record, and there has been no application for a writ of diminution to supply it. *Canton Co. of Baltimore v. City of Baltimore*, 106 Md. 69, 66 Atl. 679, 67 Atl. 274.

(e) The appellate court is confined to the statement of facts as presented by the record.—*Meyer v. Henderson*, 88 Md. 585, 41 Atl. 1073, 42 Atl. 241.

(f) In passing upon a bill of exceptions, the court will confine itself to the facts set out therein, without looking at other parts of the record.—*Kent v. Holliday*, 17 Md. 387.

(g) Where a devisee alleged that a fund derived from the real estate of her testator, and belonging to her, had been applied by the trustee, in whose hands it was, to the payment of the testator's debts, and claimed that the amount thus taken should be refunded out of the proceeds of other real estate subsequently in the hands of the trustee, it is unnecessary to determine on appeal the question raised by her claim if it does not appear by the record, or any of the proceedings thereby made evidence, that the personal estate of the testator was insufficient for the payment of his debts, which it was incumbent upon the devisee to show, before her claim could be considered.—*Diffenderffer v. Winder*, 3 G. & J. 311.

(h) Where, from the record, it appears that there was error, the Court of Appeals will form its opinion thereupon, though, if all the facts had been inserted in the bill of exceptions, the conduct of the court below might have appeared free from all error or ground of exception.—*Allegre v. Maryland Ins. Co.*, 6 H. & J. 408, 14 Am. Dec. 289.

### § 672. Errors on face of record.

#### *Cross-References.*

In absence of bill of exceptions, case, or statement of facts, see ante, § 545.

Necessity of bill of exceptions, case or statement of facts, see ante, § 544.

(a) A ruling of the trial court not included in the bill of exceptions will not be considered on appeal, though the prayer upon which the ruling was based is appended to the record and printed therein immediately after a bill of exceptions.—*Phillips v. Washington & R. Ry. Co. of Montgomery County*, 104 Md. 455, 65 Atl. 422.

(b) In passing upon a bill of exceptions, the court will confine itself to the facts set out therein, without looking at other parts of the record.—*Kent v. Holliday*, 17 Md. 387.

(c) Where, from the record, it appears that there was error, the Court of Appeals will form its opinion thereupon, though, if all the facts had been inserted in the bill of exceptions, the conduct of the court below might have appeared free from all error or ground of exception.—*Allegre v. Maryland Ins. Co.*, 6 H. & J. 408, 14 Am. Dec. 289.

### § 673. Grounds and form of action or defense.

#### *Cross-Reference.*

Presumptions as to grounds or form of action or defense, see post, § 910.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 674. Organization and jurisdiction of lower court.

#### *Cross-References.*

Presumptions as to organization and jurisdiction of lower court, see post, § 911.

Requisites of record as to jurisdictional questions, see ante, § 493.

(a) Where the record does not show the question as to whether the averments of the bill are sufficient to give the court below jurisdiction of the case, such question will not be considered by the court of appeals.—*Estep v. Mackey*, 52 Md. 596.

### § 675. Venue.

#### *Cross-References.*

Necessity of showing presentation of question in lower court, see ante, § 499.  
Presumptions as to venue, see post, § 912.

When part of record, see ante, § 520.

### § 676. Parties.

#### *Cross-References.*

Necessity of record showing right of review, see ante, § 497.

Presumptions as to parties, see post, § 913.

### § 677. Process.

#### *Cross-References.*

As part of record, see ante, § 517.

Presumptions as to process, see post, § 914.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 678. Pleading.

#### *Cross-References.*

As part of record, see ante, § 518.

Necessity of including pleadings in abstract, see ante, § 581.

Necessity of record showing exceptions, see ante, § 501.

Necessity of showing presentation of question in lower court, see ante, § 499.

Necessity of showing rulings by lower court on pleadings, see ante, § 500.

Presentation of exceptions taken by bill of exceptions, case, or statement, see ante, § 549.

Presumptions as to pleading, see post, §§ 916-919.

### § 679.— In general.

(a) The action of the trial court in refusing to allow a defendant to plead after the time prescribed by Acts 1902, c. 409 (Pub. Loc. Laws of Allegany County), which also provided that the court, at any time before judgment, may, upon good cause shown, extend the time for pleading, cannot be reviewed on appeal, where the record does not show what excuse was offered for delay.—*Betz v. P. Welty & Co.*, 116 Md. 190, 81 Atl. 382.

(b) Where the bill of exceptions presents to the county court no question upon the pleadings, none is presented in the Court of Appeals. In such cases, the questions to be decided arise upon the proof, without reference to the pleadings, which are assumed to be correct.—*Brooke v. Waring*, 7 Gill 5.

### § 680.— Demurrers.

#### *Cross-Reference.*

When part of record, see ante, § 518.

**§ 681.— Amendments.***Cross-Reference.*

When part of record, see ante, § 518.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 682.— Striking out.***Cross-References.*

Other motions relating to pleadings, see ante, § 679.

When part of record, see ante, § 518.

(a) Where the record on appeal shows that the answer was stricken out under a rule of court, but does not set forth the substance of the rule, the action of the lower court will not be reviewed.—*Washington & B. Turnpike Road v. State*, 19 Md. 239.

**§ 683. Depositions and affidavits.***Cross-Reference.*

As part of record, see ante, § 523.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 684. Questions on interlocutory proceedings.***Cross-References.*

Failure of record to show proceedings for review as ground of dismissal, see ante, § 635.

Interlocutory proceedings as part of record, see ante, § 520.

Necessity of bill of exceptions, case, or statement presenting evidence, see ante, § 548.

Presentation of exceptions taken by bill of exceptions, case, or statement, see ante, § 549.

Presumptions, see post, § 920.

As part of record, see ante, § 520.

Grounds and reasons for ruling, see post, § 716.

Necessity of showing ruling by lower court, see ante, § 500.

Necessity of showing presentation of question in lower court, see ante, § 499.

(a) An appeal from an order of the orphans' court passed in a summary proceeding on evidence will be dismissed unless such evidence has been reduced to writing, and transmitted with the record to the appellate court.—*Cox v. Chalk*, 57 Md. 569.

(b) Upon a motion to strike out a rule for security, all the presumptions are that the court acted upon sufficient proof in laying absolute rule for security, and it devolves

upon appellant to show affirmatively the contrary, and, where he has not done so, there is a presumption in favor of the correctness of the court's judgment, which is conclusive upon the Court of Appeals.—*State v. Layman*, 46 Md. 190.

(c) An order dissolving or sustaining an attachment cannot be reviewed where the evidence is not in the record.—*Hollowell v. Miller*, 17 Md. 305.

**§ 685. Right to trial by jury.***Cross-Reference.*

Presumptions, see post, § 921.

**§ 686. Qualifications and selection of jurors.***Cross-References.*

Custody and conduct of jury, see post, § 688.

Presumptions, see post, § 922.

**§ 687. Reference.***Cross-References.*

Presumptions as to reference, see post, § 924.

Proceedings on reference when part of record, see ante, § 526.

Sufficiency of evidence to sustain report, see post, §§ 694-697.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 688. Conduct of trial or hearing.***Cross-References.*

Necessity of bill of exceptions, see ante, § 547.

Necessity of showing presentation of question to lower court, see ante, § 499.

Presumptions as to conduct of trial, see post, § 925.

Reception of evidence, see post, §§ 690-692.

(a) An exception to the competency of a judge to make an order in the case, because he furnished security when the defendant laid a rule for security for costs upon the plaintiff, cannot be sustained, where neither the docket entries nor the record disclose any order made by such judge.—*Goodman v. Saperstein*, 115 Md. 678, 81 Atl. 695.

**§ 689. Admissibility of evidence.***Cross-References.*

Depositions and affidavits, see ante, § 683.

Evidence as part of record in general, see ante, §§ 522-524.

Grounds and reasons for ruling, see post, § 716.

Necessity of bill of exceptions, case, or statement in general, see ante, § 548.

Necessity of including evidence in abstract, see ante, § 581.

Necessity of record showing exceptions, see ante, § 501.

Necessity of record showing motion for new trial, see ante, § 502.

Necessity of record showing objections, see ante, § 499.

Necessity of record showing rulings of lower court, see ante, § 500.

Presentation of exceptions taken by bill of exceptions, case, or statement, see ante, § 549.

Presumptions as to admissibility, see post, § 926.

Proceedings in intermediate courts, see post, § 711.

Proceedings on reference, see ante, § 687.

### § 690.—In general.

#### *Cross-References.*

Rulings by lower court, see ante, § 500.

Grounds and reasons for rulings, see post, § 716.

Necessity of setting forth evidence excluded, see post, § 692.

(a) Where bonds in the hands of a bonding company were attached and judgment of condemnation had, which contained a recital fixing the amount for which the property condemned was liable, the recital not being intended as a judgment in personam against the defendant, error in having evidence of defendant's indebtedness produced before the court would be harmless, unless the amount of the judgment of condemnation exceeded the amount named in the writs, and hence where the writs are not in the record the error cannot be considered.—*De Bearn v. De Bearn*, 119 Md. 418, 86 Atl. 1049.

(b) Where counsel for plaintiff, suing a city, stated that he had no desire to offer in evidence an official report to the city, which was then in court, but only to call attention to a question of notice, he must offer in evidence the parts of the report on which he desired a ruling, and where the court excluded it he must make it a part of the record to make the ruling reviewable.—*Kurrle v. City of Baltimore*, 113 Md. 63, 77 Atl. 373.

(c) Where the page of an official report to a city referred to in a question asked a witness is not in the record, and the court on appeal has no information by which it may determine the applicability of the

question, its exclusion will not be reviewed.—*Kurrle v. City of Baltimore*, 113 Md. 63, 77 Atl. 373.

(d) Any error in permitting questions to be put will not justify reversal, it not being shown by the record that they were answered.—*Lewis v. Tapman*, 90 Md. 294, 45 Atl. 459, 47 L. R. A. 385.

(e) The admissibility of testimony on cross-examination cannot be determined on appeal, where the record does not contain the testimony in chief.—*Devoe v. Singleton*, 80 Md. 63, 30 Atl. 614.

(f) If the record on appeal does not show how a question permitted by the court, against objection, was answered, or that it was answered at all, the ruling of the court will not be disturbed.—*Wilson v. Merryman*, 48 Md. 328; *Blaen Avon Coal Co. v. McCulloh*, 59 Md. 403, 43 Am. Rep. 560; *Devoe v. Singleton*, 80 Md. 63, 30 Atl. 614.

(g) Objections to the admission of documentary evidence will not be considered on appeal unless such documents, or the parts thereof objected to, form a part of the record.—*Gent v. Lynch*, 23 Md. 58.

(h) Alleged error in the admission of evidence will not be considered unless the evidence admitted appears.—*Clemons v. Baltimore*, 16 Md. 208.

(i) Where objection is taken to the competency of a witness, who, on taking the stand, was asked a question to test his competency, and no further examination on this point was had, his competency must be determined by the question and his answer thereto alone. What the party calling the witness offered to prove by him cannot be looked into by the Court of Appeals.—*Heskett v. Borden Min. Co.*, 10 Md. 179.

(j) Where the incompetency of a witness is supposed to rest on a deed not used on the trial for any purpose, such deed cannot authorize a decision by the court that the court below erred in not rejecting the evidence of the witness.—*Emory v. Owings*, 3 Md. 178.

(k) Where a witness is objected to on the ground of interest, that fact must appear in the record.—*Renwick v. Williams*, 2 Md. 356.

**§ 691.—Necessity of setting forth all the evidence.**

*Cross-Reference.*

See ante, § 690.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 692.—Necessity of setting forth evidence excluded.**

(a) Exclusion of a document offered in evidence cannot be reviewed, where the document, or so much as is necessary to show its legal effect, does not appear in the record.—Whisner v. Whisner, 122 Md. 195, 89 Atl. 393.

(b) It cannot be determined whether a document such as the charter of a hospital was relevant evidence in an action against a surgeon for malpractice, where the charter is not in the record on appeal.—Hunner v. Stevenson, 122 Md. 40, 89 Atl. 418.

(c) The appellate court cannot review exceptions to questions where the record does not give the answers made to the questions objected to.—Harris v. Hipsley, 122 Md. 418, 89 Atl. 852.

(d) The Court of Appeals will review an exception to a refusal to allow a witness to answer a question, though the proposed answer is not in the record.—Mount Vernon Brewing Co. v. Teschner, 108 Md. 158, 69 Atl. 702.

(e) An alleged error in refusing to admit in evidence a certain document cannot be reviewed where the record fails to show the contents of the paper.—United Rys. & Electric Co. v. Hertel, 97 Md. 382, 55 Atl. 428.

(f) Complaint that the court erred in refusing to allow witnesses to answer questions set forth cannot be considered, where it does not appear what answers were expected.—Brashears v. Orme, 93 Md. 442, 49 Atl. 620.

(g) To make an exception to the refusal of the court to allow a witness to answer a question available, the bill of exceptions must show what fact was expected to be elicited by the question.—Jackson v. Jackson, 82 Md. 17, 33 Atl. 317.

(h) A judgment will not be reversed because of the exclusion of evidence, where such evidence is not set out in the record.—Taylor v. Brown, 65 Md. 366, 4 Atl. 888; Blumhardt v. Rohr, 70 Md. 328, 17 Atl. 266.

(i) The exclusion of documentary evidence is not assignable as error where the excluded documents are not set forth in the bill of exceptions.—Duvall v. Peach, 7 Gill 172; Miller v. Miller, 41 Md. 623.

(j) If the court of equity restrict an auditor to the pleadings and proofs already in a cause, it must clearly appear that material and pertinent evidence, which could have been produced, has been thereby excluded, in order to furnish ground for a reversal of judgment.—Calvert v. Carter, 18 Md. 73.

**§ 693. Sufficiency of evidence.**

*Cross-References.*

Effect of failure to brief evidence, see ante, § 592.

Necessity of bill of exceptions, case, or statement in general, see ante, § 548.

Necessity of including evidence in abstract, see ante, § 581.

Necessity of incorporating evidence in record in general, see ante, § 515.

Necessity of record showing motion for new trial, see ante, § 502.

Presumptions as to facts or evidence not shown by record, see post, §§ 907-909.

**§ 694.—In general.**

(a) Under Code, art. 5, § 9, prohibiting the Court of Appeals from deciding any question not plainly appearing by the record to have been determined below, a prayer by defendant for a directed verdict, asserting that plaintiff had offered no evidence legally sufficient to support the declaration's material averments, is too general and indefinite to present any question for the decision of the Court of Appeals.—Acker, Merrill & Condit Co. v. McGaw, 106 Md. 536, 68 Atl. 17.

(b) Where the sufficiency of the evidence to sustain the allegations of the petition is questioned on appeal, but the record does not set out the evidence as it was received, but contains an agreement of counsel "that the testimony hereto attached shall be taken as the testimony to be inserted in the place of that filed for the record," followed by

the statement that the complainant offered testimony "tending" to prove certain facts, and that defendant offered testimony "tending" to prove certain facts indicated, which were contradictory of the material part of the complainant's evidence, the court cannot determine the question raised, and the judgment must be affirmed.—*Reid v. Forsythe*, 99 Md. 362, 58 Atl. 204.

**§ 695.—Necessity of setting forth all the evidence.**

*Cross-Reference.*

Presumptions, see post, § 907.

(a) Where the evidence is not all in the record, its sufficiency cannot be reviewed.—*Smith v. Shaffer*, 46 Md. 573.

**§ 696.—Necessity of recital or certificate that all the evidence is included.**

*Cross-Reference.*

Questions presented in absence of showing that record contains all the evidence in general, see ante, § 671.

(a) The sufficiency of the evidence cannot be considered on appeal where the record does not affirmatively show that it contains all the evidence.—*Wolfe v. Hauver*, 1 Gill 84.

**§ 697.—Sufficiency of recital or certificate that all the evidence is included.**

*Cross-Reference.*

Conclusiveness and effect of recital or certificate, see ante, § 663.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 698. Instructions.**

*Cross-References.*

Effect of incorporating original bill of exceptions in transcript, see ante, § 600.

Identification of instructions annexed to record, see ante, § 616.

Necessity of bill of exceptions, case, or statement, see ante, § 548.

Necessity of including in abstract, see ante, § 581.

Necessity of record showing exceptions, see ante, § 501.

Necessity of record showing motion for new trial, see ante, § 502.

Necessity of record showing objections, see ante, § 499.

Necessity of record showing rulings by lower court, see ante, § 500.

Presentation of exceptions taken by bill of exceptions, case, or statement, see ante, § 549.

Presumptions as to instructions, see post, § 928.

When part of record in general, see ante, § 525.

**§ 699.—In general.**

*Cross-References.*

Necessity of setting forth entire charge, see post, § 702.

Necessity of setting forth instructions refused, see post, § 703.

(a) Where there was no demurrer to any of the pleadings, nor any special reference to the pleadings in the prayers forming the basis of the bill of exceptions, the correctness of the prayers must be determined by a consideration of the evidence.—*Commercial Realty & Construction Co. v. Dorsey*, 114 Md. 172, 78 Atl. 1099.

(b) When there are papers in the record purporting to be exceptions, but merely signed by the attorneys, and not signed or sealed by the judge, the correctness of the law of the court's instructions is open for review upon the exceptions taken, but not the legal sufficiency of the evidence upon which the instructions are based.—*Albert v. State*, 66 Md. 325, 7 Atl. 697, 59 Am. Rep. 159.

(c) Where the record does not show whether a certain prayer was granted or refused, and no exception in reference to the court's ruling upon it was taken, it is not before the appellate court for review.—*Baltimore & O. R. Co. v. Resley*, 14 Md. 424.

**§ 700.—Necessity of setting forth pleadings.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 701.—Necessity of setting forth evidence.**

*Cross-Reference.*

Effect of stipulation in bill of exceptions, see "Exceptions, Bill of," § 26.

(a) The questions presented by a prayer for instructions, the propriety of which depends on the evidence, cannot be considered on appeal, the bill of exceptions, containing the prayers, not containing the



evidence, and not being connected by express reference to a bill of exceptions which, though containing the evidence, brings up another question.—*Modern Woodmen of America v. Cecil*, 108 Md. 357, 70 Atl. 331.

(b) Where, in an action for the price of certain lumber alleged to have been sold to three defendants jointly, an objection to certain instructions submitting the liability of two of the defendants according to plaintiffs' theory, in that such instructions ignored a "paper writing" which passed between plaintiff and the other defendant and was the foundation of the contract between them, could not be reviewed, where such "paper writing" was not in the appeal record.—*Oldenburg & Kelley v. Dorsey*, 102 Md. 172, 62 Alt. 576.

(d) The instructions cannot be reviewed unless the testimony is in the record.—*Reynolds v. Negro Juliet*, 14 Md. 118.

(e) Refusal to give a charge asked is not reviewable where the evidence is not in the record.—*Burtles v. State*, 4 Md. 273.

(f) To permit a review of instructions based on evidence, the evidence must appear.—*Ragan v. Gaither*, 11 G. & J. 472.

**§ 702.—Necessity of setting forth entire charge.**

**§ 703.—Necessity of setting forth instructions refused.**

*Cross-Reference.*

Necessity of showing that refused instructions were requested, see ante, § 699.

**§ 704. Verdict, findings, or decision.**

*Cross-References.*

Findings of referee, master, or auditor, see ante, § 687.

Necessity of bill of exceptions, case, or statement to review rulings in general, see ante, § 547.

Necessity of including in transcript or return, see ante, § 597.

Necessity of record showing exceptions, see ante, § 501.

Necessity of record showing questions and objections, see ante, § 499.

Presentation of exceptions taken by bill of exceptions, case, or statement, see ante, § 549.

Presumptions as to findings, see post, § 931.

Presumptions as to verdict, see post, § 930.

Sufficiency of evidence to sustain verdict or findings, see ante, §§ 694-697.

Where part of record, see ante, § 527.

**§ 705. Amount of recovery or extent of relief.**

*Cross-References.*

Costs and attorneys' fees, see post, § 709.

Necessity of bill of exceptions, case, or statement presenting evidence, see ante, § 548.

Presumptions, see post, § 932.

**§ 706. Grounds for arrest of judgment, new trial, or rehearing.**

*Cross-References.*

Authentication of record, see ante, § 616.

Grounds and reasons for ruling, see post, § 716.

Necessity of bill of exceptions, case, or statement presenting evidence, see ante, § 548.

Necessity of including motion in abstract, see ante, § 581.

Presumptions, see post, § 933.

Review of errors occurring at trial dependent on record showing motion for new trial, grounds thereof, and proceedings thereon, see ante, § 502.

When part of record, see ante, § 528.

Presentation of exceptions taken by bill of exceptions, case, or statement, see ante, § 549.

**§ 707. Judgment.**

*Cross-References.*

Grounds and reasons for ruling, see post, § 716.

Judgment on demurrer, see ante, § 680.

Necessity of including in transcript or return, see ante, § 597.

Necessity of record showing, see ante, § 494.

Necessity of record showing exception, see ante, § 501.

Necessity of record showing motion for new trial, see ante, § 502.

Necessity of record showing proceedings to sustain judgment or order, see ante, § 496.

Necessity of showing in abstract, see ante, § 581.

Necessity of showing presentation of question in lower court, see ante, § 499.

Presentation of exceptions taken by bill of exceptions, case, or statement, see ante, § 549.

Presumptions as to judgment, see post, § 934.

Sufficiency of evidence to sustain judgment, see ante, §§ 694-697.

When part of record, see ante, § 529.

**§ 708. Questions arising after judgment.**

*Cross-References.*

Necessity of bill of exceptions, case, or statement presenting evidence, see ante, § 548.

Necessity of showing presentation of question in lower court, see ante, § 499.  
 Necessity of showing ruling by lower court, see ante, § 500.  
 Presumptions, see post, § 935.  
 Proceedings after judgment as part of record, see ante, § 530.

### § 709. Costs.

#### *Cross-References.*

Necessity of bill of exceptions, case, or statement presenting evidence, see ante, § 548.  
 Necessity of record showing, see ante, §§ 499, 501.  
 Necessity of showing presentation and reservation of grounds of review, see ante, § 499.  
 Presumptions, see post, § 936.

(Omitted from the classification used herein.)

### § 711. Questions in intermediate courts.

#### *Cross-References.*

Proceedings as part of record, see ante, § 532.  
 What record must show in general, see ante, § 512.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### (L) MATTERS NOT APPARENT OF RECORD.

#### *Cross-References.*

Affidavits and other proofs on motion to dismiss, see post, § 799.  
 Consideration on rehearing, see post, § 835.  
 Effect of loss or destruction of record, see ante, § 548.  
 Grounds for rehearing, see post, § 832.  
 Matters constituting part of record, see ante, §§ 516-543.  
 Matters or evidence considered in determining question in general, see post, § 837.  
 Matters to be shown by record, see ante, §§ 493-515.  
 Presumptions as to facts or evidence not shown by record, see post, §§ 906-939.  
 Relation of assignment of errors to record, see post, § 751.  
 Special orders as to contents of record, see ante, § 538.  
 Criminal prosecutions, see "Criminal Law," § 1128.

### § 712. Matters not included or shown in general.

#### *Cross-References.*

Effect of omissions in general, see ante, § 635.  
 Limitation of review by scope of record, see ante, §§ 671-711.  
 Necessity that grounds of review appear of record, see ante, § 497.

(a) An order of the trial court which is

not contained in the record cannot be reviewed on appeal.—*Middendorf v. Baltimore Refrigerating & Heating Co. of Baltimore City*, 117 Md. 17, 82 Atl. 1047.

(b) Affidavits or other papers filed in the appellate court, but not made part of the transcript, will not be considered.—*Fowler v. Brady*, 110 Md. 204, 73 Atl. 15.

(c) Where the record on appeal contains no information as to the rules of court relied on by a party urging them on appeal, the rules cannot be considered.—*Stockbridge v. Fahnestock*, 87 Md. 127, 39 Atl. 95; *Allen v. Same*, *Ibid*.

(d) Oral testimony received by the court below in addition to affidavits on the hearing of a motion, but not made part of the record sent up to the appellate court, cannot be regarded by the latter.—*Bond v. Citizens' Nat. Bank*, 65 Md. 498, 4 Atl. 893.

(e) The appellate court can consider nothing that is not contained in the record, and will not pass on a question not raised by the record.—*Stansbury v. Keady*, 29 Md. 361; *Downes v. Friel*, 57 Md. 531; *Northern Cent. R. Co. v. Mills*, 61 Md. 355.

(f) An appeal was taken from the refusal of the orphans' court to order the executrix of an estate to deliver to the appellant certain personal property claimed by him under the will and codicil of the testator. It appeared by the record that the final account of the executrix was exhibited, but not passed; that some of the payments and disbursements claimed were allowed, and some rejected; that part of those rejected were on account of insufficient proof; but it did not appear which were allowed, and which rejected for want of proof; neither did it appear that the executrix charged herself with "the inventory," how much the inventory amounted to, or what sum she received exclusive of it, neither the inventory nor administration account being on the record. *Held*, that for want of sufficient information in the record the court did not feel authorized to say the orphans' court erred in refusing to order the executrix to deliver to the appellant the personal property claimed by him.—*Lowe v. Lowe*, 6 Md. 347.

**§ 713. Matters improperly included.***Cross-References.*

Effect of including unnecessary matter, see ante, § 686.

Striking out, see ante, § 655.

Bill of exceptions as part of record, see ante, §§ 586, 537.

Presentation of exceptions taken by bill, case, or statement, or by record proper, see ante, § 549.

(a) The improper inclusion of a demurrer to the declaration in the bill of exceptions does not prevent consideration of the demurrer upon appeal, it being presented by the record.—*Junkins v. Sullivan*, 110 Md. 539, 73 Atl. 264.

(b) Where oral evidence of an agreement between counsel to continue a cause, introduced in support of a motion to strike out a judgment, is not made a part of a bill of exceptions, or certified to by the judge, but is simply inserted in the record of the proceedings by the clerk at the request of counsel who introduced it, the sufficiency of the evidence to support the motion cannot be reviewed on appeal.—*Main v. Kinzer*, 91 Md. 760, 46 Atl. 1070.

(c) A record of a case referred to in defendant's plea of *res judicata* will not be considered on appeal, though it was "added" to the record on appeal at defendant's request, where it was not before the trial court, which sustained a demurrer to the plea.—*Brooke v. Gregg*, 89 Md. 234, 43 Atl. 38.

(d) Rulings on demurrers will not be reviewed unless they appear otherwise than in the bill of exceptions.—*Davis v. Carroll*, 71 Md. 568, 18 Atl. 965.

**§ 714. Matters appearing otherwise than by record.***Cross-References.*

Judicial notice, see "Evidence," §§ 1-52.

Substitute for abstract of record, see ante, § 591.

Consideration of other cases and matters therein in general, see post, § 837.

Stipulations for amendment, see ante, § 646.

Official certificates or statements as part of record, see ante, § 541.

To impeach or contradict record, see ante, § 669.

(a) The case will be considered as if the rule of the lower court were regularly before the appellate court, though it is not

in the record, it being conceded that it is properly stated in the briefs, and no objection to its absence from the record having been made.—*Taylor v. Denny*, 118 Md. 124, 84 Atl. 369.

(b) The bill to enjoin collection of a tax not alleging that notice of assessment was not given, and such fact not appearing in the record dismissing the bill, the decree cannot be reversed on the ground that such notice was not given, because appellant's counsel stated in oral argument that it was not given, and this was not denied by appellees' counsel.—*Gittings v. City of Baltimore*, 95 Md. 419, 52 Atl. 937, 54 Atl. 253.

(c) Where an agreed statement of facts provided that if the court believed defendant liable for the taxes, or any part of them, it could give judgment for such amount, and, if it was not liable, to give judgment for defendant, and reserved the right of appeal to either party, it being the duty of the trial court to declare the law on the facts stated, and appellate court's right to review its decision thereon is not affected by the rule that the Court of Appeals shall in no case decide any point or question which does not appear by the record to have been raised in the trial court.—*Baltimore, C. & A. Ry. Co. v. Commissioners of Wicomico County*, 93 Md. 113, 48 Atl. 853; *Commissioners of Wicomico County v. Baltimore, C. & A. Ry. Co.*, *Ibid.*

**§ 715. Evidence relating to question involved.***Cross-References.*

Evidence to impeach or contradict record, see ante, § 668.

Proofs relating to the cause of action not produced at trial, see post, § 891.

Proof to correct record, see ante, § 656.

(a) A rule of the court below, not appearing in the record, cannot be judicially noticed.—*Cherry v. Baker*, 17 Md. 75; *Scott v. Scott*, *Ibid.* 78.

**§ 716. Grounds and reasons for ruling.***Cross-References.*

Grounds of motion in arrest for new trial or rehearing, see ante, § 706.

Grounds of decision, see ante, § 495.

(a) The Court of Appeals will not review the action of the trial court in overruling a

motion to quash an execution and set aside a judgment, where it does not appear from the record that any reasons were assigned or grounds stated in the trial court in support of the motion.—*Cockey v. Ensor*, 43 Md. 266.

### § 717. Opinion of lower court.

#### *Cross-References.*

Opinion as part of record, see ante, § 533.  
Review of opinion of court or reasons for decision in general, see post, § 854.

(a) A statement in an opinion by the trial court, in mandamus, that all questions of fact were waived or admitted, will be considered on appeal as an admission of record equivalent to full proof of the facts.—*Beasley v. Ridout*, 94 Md. 641, 52 Atl. 61.

(b) The statement of the judge below in his opinion that a motion was submitted on the pleadings is conclusive on appeal, where appellant made no application to him to correct it.—*Fersner v. David Bradley & Co.*, 87 Md. 488, 40 Atl. 58.

## **XI. ASSIGNMENT OF ERRORS.**

#### *Cross-References.*

Incorporation in brief, see post, § 759.  
References to assignment of errors in brief, see post, § 760.  
Specification of errors in petition for appeal or writ of error, see ante, § 362.  
Specification of errors in brief, see post, § 758.  
Specification of errors in notice of appeal, see ante, § 421.  
Waiver by failure to urge on appeal, see post, § 1078.  
Appeals from justices' courts, see "Justices of the Peace," § 165.  
Bankruptcy proceedings, see "Bankruptcy," § 464.  
Consideration of assignments in original case in proceedings for equitable relief against judgment, see "Judgment," § 467.  
Criminal prosecutions, see "Criminal Law," § 1129.  
In admiralty, see "Admiralty," § 109.  
In mandamus proceedings, see "Mandamus," § 187.  
Necessity of assigning federal question in state court for review by United States Supreme Court, see "Courts," § 396.  
On review in United States Circuit Court of Appeals, see "Courts," § 405.  
Practice in federal courts, see "Courts," § 356.  
Presentation of federal question for review of decision of state court by United States Supreme Court, see "Courts," § 396.  
Probate proceedings, see "Courts," § 202; "Wills," § 371.

### § 718. Purpose and functions.

### § 719. Necessity.

#### *Cross-References.*

Assignment of cross-errors, see post, § 747.  
Effect of failure to assign particular errors, see post, § 754.  
In intermediate court in order to review on further appeal, see post, § 1082.  
Substitutes, see post, § 752.  
For review by United States Supreme Court of decisions of territorial courts, see "Courts," § 387.  
Specification of errors, see post, §§ 725, 728, 730, 731, 732, 733, 734.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 720. Parties by or against whom errors may be assigned.

#### *Cross-References.*

Allegation as to interest of parties, see post, § 722.  
Assignment of cross-errors, see post, § 747.  
Designation of parties, see post, § 722.  
Joint or separate assignments, see post, § 721.

### § 721. Joint or separate assignments.

#### *Cross-References.*

Including errors in one assignment, see post, §§ 736-741.  
By husband and wife, see "Husband and Wife," § 243.

### § 722. Form and requisites in general.

#### *Cross-References.*

Assignment of cross-errors, see post, § 747.  
Defects, objections, and amendments, see post, § 748.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 723. Specification of errors.

#### *Cross-References.*

Defects, objections, and amendments, see post, § 748.  
Effect of failure to assign particular errors, see post, § 754.  
Necessity of assignment, see ante, § 719.  
Necessity of specific exception, see ante, § 273.  
Scope and effect, see post, § 750.  
Specification in briefs, see post, § 758.  
Specification in notice of appeal, see ante, § 421.  
Specification in petition for appeal or writ of error, see ante, § 362.  
Statement of grounds or motion for new trial, see ante, § 302.

**§ 724.—In general.***Cross-Reference.*

Necessity for reference to record, see post, § 743.

(a) Under a general assignment that, "upon the pleading and all the evidence in this cause, plaintiff is not entitled to recover," no question can be raised in the appellate court.—*Western Maryland R. Co. v. Carter*, 59 Md. 306.

**§ 725.—Rulings on pleadings.***Cross-References.*

Including errors in one assignment, see post, § 737.

Necessity of assignment, see ante, § 719.

Proposition and statements accompanying assignment, see post, § 742.

Scope and effect, see post, § 750.

Joint assignments, see ante, § 721.

References to record, see post, § 743.

Rules of United States Circuit Court of Appeals as to specifications, see "Courts," § 405.

**§ 726.—Interlocutory proceedings.****§ 727.—Conduct of trial.****§ 728.—Rulings as to evidence.***Cross-References.*

Including errors in one assignment, see post, § 738.

Necessity for assignment, see ante, § 719.

Propositions and statements accompanying assignments, see post, § 742.

References to record, see ante, § 724; post, § 743.

Scope and effect of assignment, see post, § 750.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 729.—Submission of issues or questions to jury.***Cross-References.*

Including errors in one assignment, see post, § 740.

Necessity of assignment of errors, see ante, § 719.

Scope and effect, see post, § 750.

(a) Under a general assignment that, "upon the pleading and all the evidence in this cause, plaintiff is not entitled to recover," no question can be raised in the appellate court.—*Western Maryland R. Co. v. Carter*, 59 Md. 306.

**§ 730.—Instructions.***Cross-References.*

Effect of failure to assign error, see post, § 754.

Including errors in one assignment, see post, § 739.

Necessity of assignment, see ante, § 719.

Propositions and statements accompanying assignment, see post, § 742.

Reference to record, see ante, § 724.

Scope and effect, see post, § 750.

(a) Exceptions taken to the rejection of prayers will not be considered on appeal in the absence of reasons stated in the court on appeal or in the appellant's brief.—*Cecil Paper Co. v. Nesbitt*, 117 Md. 59, 83 Atl. 254.

(b) Reasons assigned in support of an exception to a prayer as not supported by the evidence, which fail to specify the particulars in which the evidence is defective, will not be considered.—*Sellman v. Wheeler*, 95 Md. 751, 54 Atl. 512.

**§ 731.—Verdict, findings, or decision.***Cross-References.*

Necessity of assignment, see ante, § 719.

Propositions and statements accompanying assignment, see post, § 742.

Scope and effect, see post, § 750.

Including errors in one assignment, see post, § 740.

**§ 732.—Motions in arrest, for new trial, or for rehearing.***Cross-References.*

Effect of failure to assign error, see post, § 754.

Including errors in one assignment, see post, § 741.

Joint assignment, see ante, § 721.

Necessity of assignment, see ante, § 719.

Propositions and statements accompanying assignment, see post, § 742.

Questions raised by assigning error to ruling on motion for new trial, see post, § 750.

**§ 733.—Judgment.***Cross-References.*

Including errors in one assignment, see post, § 740.

Necessity of assignment, see ante, § 719.

Propositions and statements accompanying assignment, see post, § 742.

Scope and effect, see post, § 750.

In suit against United States, see "United States," § 146.

**§ 734.—Proceedings after judgment.***Cross-Reference.*

Necessity of assignment, see ante, § 719.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 735. Including errors in one assignment.***Cross-References.*

Joinder in assignments by two or more parties, see ante, § 721.

Propositions and statements accompanying assignment, see post, § 742.

**§ 736.— In general.****§ 737.— Rulings on pleadings.***Cross-Reference.*

Specification of errors in general, see ante, § 725.

**§ 738.— Rulings as to evidence.***Cross-Reference.*

Specification of errors in general, see ante, § 728.

**§ 739.— Instructions.***Cross-Reference.*

Specification of errors in general, see ante, § 730.

**§ 740.— Verdict, findings, or decision.***Cross-References.*

Specification of errors in general, see ante, §§ 729, 731, 733.

**§ 741.— Motions in arrest, for new trial, or for rehearing.***Cross-Reference.*

Specification of error in general, see ante, § 732.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 742. Propositions and statements accompanying assignment of errors.***Cross-References.*

Incorporation of assignment of errors in brief in general, see post, § 759.

Necessity for specification of error in intermediate court in order to review on further appeal, see post, § 1082.

(a) Under a general assignment that, "upon the pleading and all the evidence in this cause, plaintiff is not entitled to recover," no question can be raised in the appellate court.—*Western Maryland R. Co. v. Carter*, 59 Md. 306.

**§ 743. References to record.***Cross-References.*

As substitute for propositions and brief statement of record, see ante, § 742.

In brief, see post, § 760.

Necessity of accompanying statement in addition to citation to record, see ante, § 742.

Reference to record as substitute for specification of errors, see ante, § 724.

**§ 744. Time for filing.***Cross-References.*

Assignment of cross-errors, see post, § 747.

Time for amendment, see post, § 748.

Computation of time, see "Time," § 9.

**§ 745. Filing and annexing to record.***Cross-References.*

Assignment of cross-errors, see post, § 747.

Necessity of abstracting, see ante, § 581.

Relation to record, see post, § 751.

**§ 746. Service.****§ 747. Assignment of cross-errors.***Cross-References.*

As appearance, see ante, § 435.

Cross-appeal from intermediate court, see post, § 1090.

Cross-appeals or writs of error, see ante, § 14.

Entering or docketing cause, see ante, § 431.

Necessity for exceptions to rulings by appellee or defendant in error, see ante, § 248.

Necessity for separate transcript, see ante, § 595.

Right of appellee or respondent to allege error in general, see post, § 878.

Waiver of objections to cross-appeal by appearance, see ante, § 435.

As against co-party, see post, § 878.

Persons not parties in appellate court, see post, § 879.

Time for taking cross-appeal, see ante, § 338.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 748. Defects, objections, and amendment.***Cross-References.*

Form and requisites in general, see ante, § 722.

Waiver of defects by joinder in error, see post, § 749.

**§ 749. Pleading to assignment and joinder in error.***Cross-References.*

As appearance, see ante, §§ 434, 435.

As waiver of defects in appeal bond, see ante, § 392.

As waiver of process or notice or of defects therein, see ante, § 429.

Confession of error, see post, § 1161.

Plea in abatement or bar of appeal or writ of error, see post, § 804.

**§ 750. Scope and effect of assignment.***Cross-References.*

Cross-errors, see ante, § 747.

Effect of failure to assign particular errors, see post, § 754.

Specification of errors in general, see ante, §§ 724-734.

**§ 751. Relation to record.***Cross-References.*

Filing and annexing to record, see ante, § 745.

Reference to record, see ante, §§ 724, 743.

**§ 752. Substitutes.****§ 753. Effect of failure to make or file.***Cross-References.*

Affirmance for defects in record and failure to file assignments of error and briefs, see ante, § 634.

As abandonment of appeal, see post, § 805.

Curing defects before hearing of motion for dismissal, see post, § 800.

Defects, objections, and amendments, see ante, § 748.

Filing and annexing to record, see ante, § 745.

Necessity of assignment of errors, see ante, § 719.

**§ 754. Effect of failure to assign particular errors.***Cross-Reference.*

Necessity of assignment of errors, see ante, § 719.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**XII. BRIEFS.***Cross-References.*

Brief of evidence in record, see ante, § 588.

Consideration of matters appearing in brief but not in record, see ante, § 714.

Dispensing with brief on second appeal, see post, § 1096.

Effect as waiver of motion to dismiss, see post, § 791.

Effect as waiver of notice, see ante, § 429.

Error waived in appellate court by failure to urge objections in briefs, see post, §§ 1078, 1079.

Failure to present matters as ground for denying rehearing, see post, § 832.

On motion to dismiss, see post, § 795.

Withdrawal, see post, § 776.

Criminal prosecutions, see "Criminal Law," § 1130.

Expenses of briefs as items of costs, see "Costs," § 258.

Necessity of presenting federal question in briefs in state court for review in United States Supreme Court, see "Courts," § 396.

On appeal from municipal courts, see "Courts," § 190.

Propositions and statements accompanying assignment of errors in Texas practice, see ante, § 742.

Validity of briefs submitted by persons not licensed to practice, see "Attorney and Client," § 11.

**§ 755. Necessity.****§ 756. Form and requisites in general.***Cross-Reference.*

Defects, objections and amendments, see post, § 766.

**§ 757. Statement of case or of facts.***Cross-References.*

Effect of stating in reply brief, see post, § 762.

Propositions and statements accompanying assignment of errors in Texas practice, see ante, § 742.

References to record, see post, § 760.

Striking out for failure to state case or facts, see post, § 767.

**§ 758. Specification of errors.***Cross-References.*

Incorporation of assignment of errors, see post, § 759.

Propositions and statements accompanying assignments of errors, see ante, § 742.

Right to assign new errors in supplemental brief, see post, § 763.

Specification of errors in general, see ante, §§ 724-734.

Striking out for failure to specify errors, see post, § 767.

**§ 759. Incorporation of assignment of errors.***Cross-References.*

Propositions and statements accompanying assignment of errors, see ante, § 742.

Specification of errors, see ante, § 758.

Striking out for failure to incorporate assignment of errors, see post, § 767.

**§ 760. Reference to record or to assignment of errors.***Cross-References.*

References to record in assignment of errors, in general, see ante, § 743.

Setting out matters of record, see ante, § 756.

Setting out statement of case or of facts, see ante, § 757.

Striking out for failure to refer to record, see post, § 767.

Statement of evidence, see ante, § 757.

**§ 761. Points and arguments.***Cross-Reference.*

Effect of failure to set out points and arguments, see post, § 774.

**§ 762. Reply briefs.****§ 763. Additional or supplemental briefs.****§ 764. Printing.****§ 765. Filing and service.***Cross-References.*

Additional or supplemental briefs, see ante, § 763.

Action in which county is party, see "Counties," § 227.  
 Computation of time for filing, see "Time," § 9.

**§ 766. Defects, objections, and amendments.**

*Cross-References.*

Estoppel to move for rehearing, see post, § 832.  
 Failure to file or serve, or to file or serve in time, see post, § 770.  
 Form and requisites in general, see ante, § 756.  
 Striking out, see post, § 767.

**§ 767. Striking out.**

*Cross-Reference.*

Motion for rehearing, see post, § 833.

**§ 768. Scope and effect.**

**§ 769. Failure to file or serve, or to file or serve in time.**

*Cross-References.*

As abandonment of appeal, see post, § 805.  
 Right to rehearing, see post, § 832.  
 Striking cause from calendar, see post, § 813.

**§ 770.— Effect in general.**

*Cross-References.*

Curing defects before hearing of motion for dismissal, see post, § 800.  
 Grounds for striking out in general, see ante, § 767.

**§ 771.— Excuses.**

**§ 772.— Relief.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 773.— Dismissal or affirmance or reversal.**

*Cross-References.*

Affirmance for defects in record and failure to file assignments of error and briefs, see ante, § 634.  
 Dismissal on court's own motion, see post, § 792.  
 Excuses in general, see ante, § 771.  
 Failure to file brief and transcript, see ante, § 627.  
 Omissions from transcript and failure to file briefs, see ante, § 635.  
 Reinstatement, see post, § 807.

(a) Under the direct provisions of court rule 11, if either party fails to furnish briefs ready for use when the case is reached in regular order, the party not in default may have the judgment affirmed,

or the case continued, at his election.—  
 Turpin v. Gale, 97 Md. 740, 57 Atl. 208.

**§ 774. Failure to set out points and arguments.**

*Cross-References.*

As waiver of error, see post, § 1078.  
 Points and arguments in general, see ante, § 761.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**XIII. DISMISSAL, WITHDRAWAL, OR ABANDONMENT.**

*Cross-References.*

Correction of calendar, see post, § 812.  
 Error waived in appellate court by failure to move for dismissal, see post, § 1077.  
 Failure to appear, see ante, § 434.  
 Striking off or quashing cause, see post, § 813.  
 Suspension or stay of proceedings, see post, § 819.  
 Appeal from decision of county board, see "Counties," § 58.  
 Appeal from order of distribution of decedent's estate, see "Executors and Administrators," § 814.  
 Appeal in proceedings on report of appraisers setting apart widow's allowance, see "Executors and Administrators," § 193.  
 Appeals from justices' courts, see "Justices of the Peace," § 166.  
 Award of costs on dismissal, see "Costs," § 232.  
 Bankruptcy proceedings, see "Bankruptcy," § 465.  
 Criminal prosecutions, see "Criminal Law," § 1131.  
 Habeas corpus proceedings, see "Habeas Corpus," § 113.  
 Highway proceedings, see "Highways," § 58.  
 In actions of forcible entry and detainer, see "Forcible Entry and Detainer," § 43.  
 Of appeals from decisions of patent office, see "Patents," § 113.  
 Rules of court as to discontinuance of appeal, see "Courts," § 80.

**§ 775. Nature of remedy by dismissal.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 776. Voluntary dismissal or withdrawal.**

*Cross-References.*

Abandonment, see post, § 805.  
 Power of court, see post, § 778.  
 Right of insane person, see "Insane Persons," § 102.

(a) An appellant may dismiss his appeal



at any time before judgment is entered, even after the opinion of the court is delivered.—*Diffenderffer v. Hughes*, 7 H. & J. 3; *Newson v. Douglas*, *Ibid.* 417, 16 Am. Dec. 317.

### § 777. Dismissal on consent.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 778. Power to order dismissal.

(a) Where the court is divided in opinion on a motion to dismiss an appeal, the motion cannot be granted.—*Hatton v. Weems*, 12 G. & J. 83.

### § 779. Grounds for dismissal.

#### *Cross-References.*

Curing defect before hearing of motion to dismiss, see post, § 800.

Grounds for dismissal without prejudice, see post, § 793.

Plea in abatement, see post, § 804.

### § 780.— In general.

#### *Cross-References.*

Interest in subject-matter in general, see ante, § 150.

Necessity for showing in record, see ante, § 497.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 781.— Want of actual controversy.

#### *Cross-References.*

Ground for affirmance, see post, § 1138.

Jurisdiction dependent on existence of controversy, see ante, § 19.

Review of questions not necessary to decision, see post, § 843.

Review unnecessary or ineffectual, see post, § 790.

As affecting right of review in general, see ante, §§ 157-159, 161-164.

(a) Where an order directed an executrix not to sell certain real estate belonging to her testatrix as advertised on February 14, 1911, but to readvertise the property for sale at a future time, pursuant to a different notice, and no sale having been had on February 14, 1911, the executrix appealed from the order February 21st following, the appeal presents a moot question, and will be dismissed.—*Smith v. Warrenfeltz*, 116 Md. 116, 81 Atl. 275.

(b) An appeal from a decree dismissing a bill to enjoin the printing of names of certain candidates on ballots will be dismissed where taken over a month after the election,

and seven weeks after the decree was passed, and where the persons whose names were sought to be kept from the ballots are not parties, so that no rights could be determined which could be enforced in the proceedings, since it is the duty of the court to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions.—*Thom v. Cook*, 118 Md. 85, 77 Atl. 120.

(c) An objection on appeal that the decree on its face appears to have been made by consent of parties must be taken on the final hearing, and not on motion to dismiss.—*Williams v. Williams*, 7 Gill 302.

### § 782.— Want of jurisdiction.

#### *Cross-References.*

Dismissal by court of its own motion, see post, § 792.

Dismissal for failure to show jurisdiction in record, see ante, § 635.

Power of parties to waive, see ante, § 21.

Striking cause from docket, see post, § 813.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 783.— Defects in proceedings in lower court.

#### *Cross-References.*

Dismissal by court of its own motion, see post, § 792.

Ground for rehearing, see post, § 832.

(a) A motion to dismiss an appeal from an order granting an injunction, on the ground of alleged defects in the defendant's answer, cannot be allowed, when all the averments of the bill, to which the court can look, in determining whether such a case is presented as entitles the appellee to the relief sought, and on which the affirmance or reversal of the order granting the injunction depends, are fully answered or denied.—*Canton Co. v. Northern Cent. Ry. Co.*, 21 Md. 383.

### § 784.— Defects in proceedings for review.

#### *Cross-References.*

See "Executors and Administrators," § 455.

Defective bond or undertaking, see ante, § 391.

Defects in assignment of errors, see ante, § 748.

Defects in brief in general, see ante, § 766.

Defects in designation of parties in assignments of error, see ante, § 722.

Delay in serving process or giving notice, see ante, § 425.

Delay or failure to take proceedings, see ante, § 356.

Dismissal by court of its own motion, see post, § 792.

Failure to assign errors in brief, see ante, § 758.

Failure to file or serve briefs, or to file or serve in time, see ante, § 773.

Failure to give security, see ante, § 395.

Failure to make or file assignment of errors, see ante, § 753.

Failure to pay fees on appeal, see ante, § 370.

Failure to serve process or give notice, see ante, §§ 425, 430.

Failure to set out points and arguments, see ante, § 774.

Ground for rehearing, see post, § 832.

Plea in abatement, see post, § 804.

Time to move for dismissal, see post, § 797.

Want of proper parties, see ante, § 336.

#### § 785.— Defects relating to record.

##### *Cross-References.*

Defects in authentication or certificate, see ante, § 641.

Defects in proceedings to obtain partial transcript, see ante, § 607.

Defects in record in general, see ante, § 634.

Defects or errors amendable, see ante, § 645.

Defects or errors in making abstract or brief of evidence, see ante, § 639.

Defects or errors in making bill of exceptions, see ante, § 637.

Defects or errors in making case or statement, see ante, § 638.

Delay in making, filing, or serving case or statement, see ante, § 564.

Effect of including unnecessary matter, see ante, § 636.

Effect of omissions in record in general, see ante, § 635.

Effect of striking out bill of exceptions, case, or statement, see ante, § 555.

Errors in making transcript or return, see ante, § 640.

Examination of record on motion to dismiss, see post, § 801.

Failure to file record in time, see ante, § 627.

Failure to make abstract or brief of evidence, see ante, § 592.

Failure to make bill of exceptions, case, or statement of facts, see ante, § 554.

Failure to make index and marginal notes on transcript, see ante, § 606.

Failure to make transcript or return, see ante, § 611.

Failure to print or serve copies of record, see ante, § 633.

Ground for rehearing, see post, § 832.

Time to move for dismissal, see post, § 797.

#### § 786.— Proceedings frivolous or for delay.

##### *Cross-Reference.*

Damages for frivolous appeal and delay, see "Costs," §§ 260-263.

#### § 787.— Failure to prosecute proceedings.

##### *Cross-References.*

Abandonment of appeal, see post, § 805.

Affirmance, see post, § 1126.

Failure of appellant to appear, see ante, § 434.

Failure to file transcript in time, see ante, §§ 627-629.

Failure to give security, see ante, § 395.

Failure to make or file assignments of error, see ante, § 753.

Striking cause from docket, see post, § 813.

Time to move for dismissal, see post, § 797.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 788.— Error not shown.

(a) Where the record does not show the point upon which the court below acted, the Court of Appeals can neither reverse nor affirm, and the appeal will be dismissed; it not being intended that such a cause should be continued on the docket, or that the appeal should be entertained.—*Davis v. Leab*, 2 G. & J. 302.

#### § 789.— Defects arising pending proceedings.

##### *Cross-Reference.*

Want of actual controversy, see ante, § 781.

#### § 790.— Review unnecessary or ineffectual.

##### *Cross-References.*

Consideration of matters not necessary to decision, see post, § 843.

Want of actual controversy, see ante, § 781.

Effect of subsequent proceedings in court below on jurisdiction of appellate court, see ante, § 457.

#### § 791.— Waiver of defects or objections.

##### *Cross-References.*

By appearance, see ante, § 435.

Delay in taking proceedings, see ante, § 355.

Failure to file record in time, see ante, § 627.

Premature appeal, see ante, § 337.

Process or notice or defects therein, see ante, § 429.

Security or defects therein, see ante, § 392.

Waiver of defects and objections to record, see ante, § 644.

**§ 792. Dismissal by court on its own motion.**

**§ 793. Dismissal without prejudice.**

*Cross-Reference.*

Voluntary dismissal or withdrawal, see ante, § 776.

**§ 794. Motion for dismissal.**

**§ 795.— Form and requisites in general.**

**§ 796.— Parties.**

*Cross-Reference.*

Voluntary dismissal, see ante, § 776.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 797.— Time for making.**

*Cross-Reference.*

Time for service of notice, see post, § 798.

(a) An appeal from an order not appealable will be dismissed, though the motion to dismiss is not filed within the time prescribed by court rule 46 (80 Atl. xvi).—Peoples v. Ault, 117 Md. 631, 84 Atl. 60.

**§ 798.— Notice.**

**§ 799.— Affidavits and other proofs.**

*Cross-References.*

Conflict as affecting determination, see post, § 801.

(a) A motion to dismiss because of delay in transmitting the record will not be considered, where it does not appear from the affidavits whether the delay was caused by the clerk or by appellant.—Pleasants v. McKenney, 109 Md. 277, 71 Atl. 955.

(b) A motion to dismiss an appeal upon the ground that the bills of exception were not prepared and submitted to the court below in conformity with one of its rules, during the term at which they were taken, will be overruled, there being nothing in the record to show that they were not submitted at the same term at which the cause was tried.—Allen v. Sowerby, 37 Md. 410.

(c) A motion was made to dismiss an appeal because the record was not transmitted in season, and a certificate of the clerk of the county court was read that the record was detained in his office by a verbal order of appellant's counsel. *Held*, that the cer-

tificate was not legitimately before the court for any purpose, and had none of the attributes of legal evidence.—Hannon v. State, 9 Gill 440.

**§ 800.— Curing defects before hearing.**

*Cross-References.*

Additional or new security, see ante, § 391.

Amendable defects or errors in record in general, see ante, § 645.

Dismissal conditioned on failure to cure defect, see post, § 802.

Effect of failure to give security, see ante, § 395.

Filing briefs after motion to dismiss, see ante, § 773.

Motion for leave to file brief, after motion to dismiss for failure to file, see ante, § 772.

**§ 801.— Hearing and determination.**

*Cross-References.*

Affidavits and other proofs, see ante, § 799.

Trial of issue not pleaded by motion to dismiss, see ante, § 749.

**§ 802. Order of dismissal.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 803. Effect of dismissal.**

*Cross-References.*

See "Executors and Administrators," § 455.

Right to another appeal or proceeding after dismissal, see ante, § 14.

Right to dismiss as to one or more co-parties, see ante, § 776.

(a) The jurisdiction of the circuit court to make orders in a case after appeals therein have been dismissed by the Court of Appeals is not ousted by the pendency in the latter court of a motion for reargument of the appeals.—Chappell v. Chappell, 86 Md. 532, 39 Atl. 984.

(b) Where an appeal has been taken from a decree in the chancery court, and dismissed by the Court of Appeals, and the case is brought to the notice of the chancellor by petition for further proceedings, it stands as if no appeals had been taken.—Lee v. Pindle, 12 G. & J. 288.

**§ 804. Plea in abatement.**

*Cross-Reference.*

Pleading to assignment of error, see ante, § 749.

**§ 805. Abandonment.***Cross-References.*

Affirmance on abandonment of appeal, see post, § 1126.  
 Effect as precluding affirmance on motion, see ante, § 627.  
 Effect of delay or failure to take proceedings in time, see ante, § 856.  
 Effect of failure to assign errors, see ante, § 753.  
 Order declaring proceedings abandoned, see post, § 806.  
 Suing out writ of error as abandonment of appeal, see ante, § 11.  
 Voluntary dismissal or withdrawal, see ante, § 776.

**§ 806. Order declaring proceedings abandoned.****§ 807. Vacating order and reinstatement.***Cross-Reference.*

Mandamus to compel, see "Mandamus," § 57.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**XIV. DOCKETS, CALENDARS, AND PROCEEDINGS PRELIMINARY TO HEARING.***Cross-References.*

Necessity of entering and docketing cause, see ante, § 431.  
 Re-entering cause as proceeding in error on dismissal of appeal, see ante, § 14.  
 Sufficiency of entry of cause, see ante, § 433.  
 Time for entry or docketing of cause, see ante, § 432.  
 Appeal from decision of county board, see "Counties," § 58.  
 In mandamus proceedings, see "Mandamus," § 187.

**§ 808. Making and keeping dockets and calendars.****§ 809. Order of causes.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 810. Preferred causes.**

(a) A petition for mandamus alleged that relator was elected city collector; that he presented himself to the mayor, who was authorized to administer the oath of office; and that his request to be sworn in was refused. The prayer was for a writ to compel respondent to administer such oath. Respondent's answer denied petitioner's elec-

tion, and admitted that the ground of his refusal was that he did not regard petitioner as legally elected. *Held*, that under Code, art. 70 § 5, making the taking of the oath of office a qualification precedent, without which an individual cannot assume the duties, the title to an office was involved, within article 5, § 44, providing that in such cases the Court of Appeals shall immediately determine the case.—*Creager v. Hooper*, 83 Md. 490, 35 Atl. 159.

**§ 811. Advancement of cause.***Cross-Reference.*

See ante, § 810.

**§ 812. Correction of calendar.****§ 813. Striking off or quashing cause.***Cross-References.*

Dismissal, withdrawal, or abandonment, see ante, §§ 775-807.  
 Entry of judgment of dismissal, see ante, § 802.  
 Making motion to strike as general appearance, see ante, § 434.  
 Power of trial court, see ante, § 436.  
 Quashing writ of error, see ante, § 403.

**§ 814. Notice of hearing or argument.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**XV. HEARING AND REHEARING.***Cross-References.*

Amendment, modification or setting aside judgment on rehearing, see post, § 1185.  
 Decision on hearing, see post, §§ 1129-1132, 1148, 1158-1163.  
 Failure to prosecute proceeding ground for dismissal, see ante, § 787.  
 On second appeal, see post, § 1096.  
 Condemnation proceedings, see "Eminent Domain," § 260.  
 Costs on argument or hearing, see "Costs," § 250.  
 Criminal prosecutions, see "Criminal Law," §§ 1132, 1133.  
 Election contests, see "Elections," § 305.  
 Habeas corpus proceedings, see "Habeas Corpus," § 113.  
 Highway proceedings, see "Highways," § 58.  
 In admiralty, see "Admiralty," § 116.  
 In suits for divorce, see "Divorce," § 183½.  
 On review in United States circuit court of appeals, see "Courts," § 405.  
 Probate proceedings, see "Wills," § 372.  
 Rehearing of appeal from decision of patent office, see "Patents," § 113.

**§ 815. Condition of cause in general.**

**§ 816. Consolidation and hearing causes together.**

*Cross-References.*

Determination and disposition of consolidated causes, see post, § 1105.  
Postponement, see post, § 818.

**§ 817. Time for hearing.**

*Cross-References.*

Term or day to which appeal may be taken or writ made returnable, see ante, § 364.  
Time for answer as affected by time for hearing, see ante, § 749.  
Time for entry or docketing, see ante, § 432.

**§ 818. Continuance or postponement.**

*Cross-References.*

Postponement instead of allowing withdrawal of bill of exceptions, see ante, § 776.

**§ 819. Suspension or stay.**

**§ 820. Conduct of hearing in general.**

**§ 821. Consideration of cause as a whole.**

*Cross-Reference.*

Consideration of merits on motion to dismiss, and postponement until final hearing, see ante, § 801.

**§ 822. Arguments of counsel.**

*Cross-Reference.*

Matters not apparent of record, see ante, § 714.

**§ 823.— In general.**

**§ 824.— Oral arguments.**

**§ 825.— Right to open and close.**

**§ 826. Submission without argument.**

**§ 827. Setting aside submission.**

**§ 828. Reargument.**

*Cross-References.*

Rehearing, see post, §§ 829-835.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 829. Rehearing.**

*Cross-References.*

Of motion to dismiss, see ante, § 801.  
Reargument, see ante, § 828.  
Recall of remittitur for purpose of rehearing, see post, § 1218.  
Rehearing after remand to lower court, see post, § 1219.  
Rules governing in United States Circuit Court of Appeals, see "Courts," § 402.

**§ 830.— In general.**

(a) Reargument of a case will not be allowed in the appellate court, unless a member of the court, who concurred in the

judgment, desires it.—*Kent v. Waters*, 18 Md. 53; *Johns v. Johns*, 20 Md. 58; *Roman v. Mali*, 42 Md. 513.

**§ 831.— Power to grant.**

**§ 832.— Grounds.**

(a) Const., art. 4, § 15, directs that "in every case an opinion in writing shall be filed within three months after the argument or submission of the cause." The judge of the Court of Appeals to whom a cause had been assigned prepared the opinion thereon promptly, but before it was adopted by the court he was overtaken by a serious illness, which required a surgical operation, that necessarily prevented him for the time being from meeting the other judges. The other judges entirely concurred in the law as announced in the opinion, and filed a per curiam order affirming the judgment, but wished to communicate further with the judge who wrote it before filing the opinion. When they deemed it proper with due regard to his physical condition to further communicate with him they did so, and then filed the opinion, but not within three months after the submission of the cause. The judges deemed the per curiam order to be a final disposition of the case, and none of them desired a re-argument. *Held*, that there were valid reasons for filing the opinion after three months. Wherefore a reargument on account of such filing was overruled.—*McCall's Ferry Power Co. v. Price*, 108 Md. 96, 69 Atl. 832.

(aa) After the affirmance of a decree fixing the priority of liens, a rehearing will not be granted on the motion of creditors not parties to the original suit, where the motion is based on facts extraneous to the record.—*State v. Cowen*, 36 Atl. 434. (Not reported in Maryland Reports.)

(b) Code, art. 5, § 75 (which is a codification of act 1806, c. 90, § 11), provides that, when a case is under rule argument in the Court of Appeals, and a party having an attorney in court shall die, judgment shall be given to the same effect as if such party were alive. Under the present constitution, all causes stand for argument at the first term after transmission of the

record, and there is no necessity for rule argument; and such rules are, in fact, never laid. *Held*, that the death of a party, after argument has been had and the cause submitted, is no ground for a reargument.—*Moore v. Taylor*, 81 Md. 644, 33 Atl. 886.

(bb) A claim of right under an act of Congress, made for the first time on motion for rehearing in the Court of Appeals, will not be considered.—*Chappell v. Bradshaw*, 15 Atl. 762. (Not reported in Maryland Reports.)

(c) By act of 1872, c. 310, the Court of Appeals was authorized to reopen and rehear certain enumerated cases, and pass such judgment as right and justice might require. *Held*, that conceding that the act was constitutional and valid, in the absence of new facts, and where a rehearing would result in leaving the original judgments undisturbed, the case would not be reinstated.—*Dorsey v. Gary*, 37 Md. 64.

### § 833.—Application.

(a) Where one of the judges who concurred in a judgment rendered by a divided bench desires a reargument, the court will order one without waiting for application of counsel.—*Kent v. Waters*, 18 Md. 53; *Roman v. Mali*, 42 Md. 513.

(b) A motion in the Court of Appeals for rescission of a decree and rehearing, though filed at the term of the rendition of the decree, is not sufficient if not accompanied by a statement of reasons therefor, or by an allegation of errors in the decree.—*Colvin v. Warford*, 18 Md. 273.

(c) To entitle one to an injunction restraining the execution of the decree pending a rehearing thereon, his petition must present such a state of facts as would prima facie entitle him to a reversal of the decree.—*Lockett v. White*, 10 G. & J. 480.

(d) Applications for rehearing address themselves to the sound discretion of the court, and do not rest on the foundation of strict right, which may not be disregarded.—*Hughes v. Jones*, 2 Md. Ch. 289. [Cited and annotated in 30 L. R. A. (N. S.) 1032, 1039, on bill of review for newly discovered evidence.]

(e) Any laches or negligence by a party making an application for rehearing will destroy his right to that kind of relief.—*Hughes v. Jones*, 2 Md. Ch. 289. [Cited and annotated in 30 L. R. A. (N. S.) 1032, 1039, on bill of review for newly discovered evidence.]

### § 834.—Effect of granting.

### § 835.—Scope and conduct.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## XVI. REVIEW.

### Cross-References.

Questions presented by record, see ante, §§ 671-711.

Actions relating to wills or probate, see "Wills," § 400.

Actions to foreclose mortgages, see "Mortgages," § 578.

Admiralty, see "Admiralty," § 118.

Allowance of claims against decedent's estate, see "Executors and Administrators," § 256.

Appeal from judgment confirming municipal assessment, see "Municipal Corporations," § 508.

Appeals from justices' courts, see "Justices of the Peace," §§ 183-185.

Appeals from municipal courts, see "Courts," § 190.

Appeals from probate courts in general, see "Courts," § 202.

Bankruptcy proceedings, see "Bankruptcy," § 467.

Condemnation proceedings, see "Eminent Domain," § 262.

Criminal prosecutions, see "Criminal Law," §§ 1134-1180.

Drainage proceedings, see "Drains," § 36.

Election contests, see "Elections," § 305.

Following state statutes and practice in federal courts, see "Courts," § 356.

Habeas corpus proceedings, see "Habeas Corpus," § 113.

Highway proceedings, see "Highways," § 58.

In actions for loss of or injury to goods stored, see "Warehousemen," § 34.

In actions of forcible entry and detainer, see "Forcible Entry and Detainer," § 43.

In mandamus proceedings, see "Mandamus," § 187.

Insolvency proceedings, see "Insolvency," § 182.

In suits for infringement of patent, see "Patents," § 324.

Of appeals from decision of Patent Office, see "Patents," § 113.

Of proceedings before referee in bankruptcy by judge, see "Bankruptcy," § 228.

On appeal from allowance of alimony, see "Divorce," § 286.

On appeal from decisions of county board allowing or disallowing claims, see "Counties," § 205.

On appeal from decisions of county courts, see "Courts," § 185.

On appeal from grant or refusal of license, see "Intoxicating Liquors," § 75.

On review in United States Circuit Court of Appeals, see "Courts," §§ 406, 407.

Practice in federal courts, see "Courts," § 356.

Probate proceedings, see "Wills," §§ 384-386.

Proceedings for sale of real estate of decedent, see "Executors and Administrators," § 358.

Review as infringement of right to jury trial, see "Jury," § 37.

Writ of review, see "Review," § 24.

#### (A) SCOPE AND EXTENT IN GENERAL.

##### *Cross-References.*

Parties entitled to allege error, see post, §§ 877-884.

Presentation of issues and questions in lower court, see ante, §§ 169-320.

Review of decisions of intermediate courts, see post, §§ 1080-1095.

Scope and extent of review on subsequent appeal, see post, § 1096.

Accounting of executor or administrator, see "Executors and Administrators," § 510.

Appeals from municipal courts, see "Courts," § 190.

Appeals from probate courts, see "Courts," § 202.

Criminal prosecutions, see "Criminal Law," § 1134.

Following state statutes and practice in federal courts, see "Courts," § 356.

In suits for divorce, see "Divorce," § 184.

On appeal from allowance of alimony, see "Divorce," § 286.

On review in United States Supreme Court of decisions of state courts, see "Courts," § 399.

Review by United States Supreme Court of decisions of territorial courts, see "Courts," § 387.

#### § 836. Power of appellate court in general.

(a) Where a lower court not only construes a will, but determines the distribution to be made thereunder, and one of the distributees appeals from the entire decree, and asks that the questions therein considered be determined, which the appellate court proceeds to do, she will not be allowed to say, on rehearing, that her appeal did not raise the question of distribution, but only the question as to whether she was entitled to an absolute or an equitable estate.—*Thomas v. Safe Deposit & Trust Co.*,

73 Md. 451, 23 Atl. 3; *Brewer v. Same*, Ibid.; *Thomas v. Levering*, Ibid.

(b) The Court of Appeals is not authorized to do anything more than decide the question whether the case as tried and determined was within the limits of the special jurisdiction conferred, in cases where special statutory jurisdiction without express power of appeal is conferred upon the circuit court in the matter of a contested election of county commissioners.—*Handy v. Hopkins*, 59 Md. 157.

#### § 837. Matters or evidence considered in determining question.

##### *Cross-References.*

Additional proofs in appellate court, see post, § 891.

Admission of evidence de hors the record, see ante, § 715.

Matters not apparent of record, see ante, §§ 712-717.

Reference to opinion of lower court, see ante, § 717.

Judicial notice, see "Evidence," §§ 1-52.

Matters not in record, see ante, § 714.

Scope and extent of review, see post, § 866.

(a) When a receiver is appointed upon a bill alone, and an appeal is taken under Code, art. 5, § 27, in passing on the propriety of the order on appeal, the court is confined to the bill and its exhibits, but where the order is not passed until after defendant has answered, the answer is considered both in the trial court and on appeal.—*Carrington v. Thomas C. Basshor Co.*, 121 Md. 71, 88 Atl. 52.

(b) Although a prayer for peremptory instruction was based on the evidence, where it referred to the pleadings, held that in determining whether it was properly granted, the sufficiency of the pleadings must be examined.—*Dudley A. Tyng & Co. v. Woodward*, 121 Md. 422, 88 Atl. 243.

(c) The court, on appeal from an ex parte order appointing a receiver of the estate of a decedent, may not consider an answer subsequently filed by the party appealing.—*Joyce v. Ragan*, 117 Md. 38, 82 Atl. 992.

(d) The Court of Appeals is not bound by the allegations of a bill, whether they be of fact or conclusions of law, but may inquire into all questions of law or fact presented by the pleadings or evidence.—*Preston v.*

Safe Deposit & Trust Co., 116 Md. 211, 81 Atl. 523.

(e) Where the record showed that a bill of particulars was not filed until after the demurrer to the declaration had been overruled, the ruling would not be disturbed on appeal, though the bill of particulars, if filed before the decision of the trial court, could have been considered in determining the sufficiency of the declaration.—*Commissioners of Anne Arundel County v. Watts*, 112 Md. 353, 76 Atl. 82.

(f) Though there was error in allowing hypothetical questions to be answered, because of their unwarranted assumptions and omissions of material facts, the answers given are to be considered on the question of error in refusing instructions based on the insufficiency of evidence.—*Baltimore & O. R. Co. v. Dever*, 112 Md. 296, 75 Atl. 352.

(g) The correctness of prayers for instructions which do not refer to pleadings must be determined entirely by a consideration of the evidence.—*Thillman v. City of Baltimore*, 111 Md. 131, 73 Atl. 722.

(h) Where defendant's motion for nonsuit at end of plaintiff's case does not refer to the pleadings, the appellate court, in passing on plaintiffs' exception to granting the request, will only consider whether the evidence was sufficient to entitle them to recover, irrespective of pleadings.—*Brady v. Brady*, 110 Md. 656, 73 Atl. 567.

(i) Code, art. 5, § 9, provides that the Court of Appeals shall not decide any question which does not plainly appear by the record to have been tried or decided by the trial court, and no instruction actually given shall be deemed defective by reason of any assumption therein of any fact by the trial court, or because of a question of law having been thereby submitted to the jury, etc. *Held*, that where a prayer was based on the evidence, without making any reference to the pleadings, the appellate court could not consider the pleadings for the purpose of determining the correctness of such prayer.—*Home Friendly Soc. of Baltimore v. Roberson*, 100 Md. 85, 59 Atl. 279.

(j) On appeal, prayers will be held to relate exclusively to the evidence, and their

correctness will be determined thereby, rather than by the pleadings, unless special reference is made to the pleadings in the prayer.—*Whitby v. Baltimore, C. & A. Ry. Co.*, 96 Md. 700, 54 Atl. 674.

(k) In an injunction case, under the construction given to Code, art. 5, § 27, this court is confined by the statute to the case made by the bill, and does not examine the answer.—*Shannon v. Wright*, 60 Md. 520.

(l) According to the Maryland practice, an injunction order, on appeal therefrom, is to be considered upon the allegations of the bill alone, unless the defendant, upon filing his answer, moves to dissolve the injunction.—*Dittman v. Repp*, 50 Md. 516, 33 Am. Rep. 325.

(m) On an appeal from an order granting an interlocutory injunction, the appellate court, in determining the propriety of the order, is confined exclusively to the bill and the exhibits filed therewith.—*Guerand v. Dandeleit*, 32 Md. 561, 3 Am. Rep. 164.

(n) Where there is error of law apparent in an exception sufficient to justify a reversal, the appellate court, in determining whether plaintiff was injured by such ruling, will consider not only the evidence set out in the principal exception, but all the evidence in the record.—*Cooke v. Cooke*, 29 Md. 538.

(o) In reviewing an order granting an injunction, upon the appeal of the defendant, after filing his answer, the appellate court is confined to the case presented by the bill. But where it appears that the court granting such order had no jurisdiction in the case, its action will be annulled.—*Blackburn v. Craufurd*, 22 Md. 447.

(p) In an appeal from an order granting an injunction on the bill of the appellees, the propriety of the order is to be determined by the bill alone, without reference to the answer of appellant subsequently filed.—*Wagner v. Cohen*, 6 Gill 97, 46 Am. Dec. 660; *Alexander v. Worthington*, 5 Md. 471; *Roman v. Strauss*, 10 Md. 89; *McCann v. Taylor*, 10 Md. 418; *Rose v. Bevan*, 10 Md. 466, 69 Am. Dec. 170; *Blackburn v. Craufurd*, 22 Md. 447.

(q) Under Acts 1835, c. 380 (Code, art. 5,



§ 27), though the defendant is obliged to file an answer as one of the conditions on which his right of appeal from an order granting an injunction and appointing a receiver depends, yet the Court of Appeals is confined to the case made by the bill, and does not examine the answer.—*Haight v. Burr*, 19 Md. 130.

(r) On appeal from orders of the chancellor granting an injunction and appointing a receiver, the answer to the bill upon which the orders were passed, although filed, is not to be considered by the court, under act 1835, cc. 346, 380, §§ 2, 3 (Code, art. 5, § 27).—*Guyton v. Flack*, 7 Md. 398.

### § 838. Questions considered.

#### *Cross-References.*

Extent of review dependent on mode of review, see post, §§ 858-861.

Issues not pleaded, see ante, § 749.

Necessity of assignment of errors, see ante, § 719.

Questions considered on review of decisions of intermediate courts, see post, §§ 1082-1084.

In collusive action, see "Action," § 8.

### § 839.—Scope of inquiry in general.

#### *Annotation.*

What questions the Federal Supreme Court will consider in reviewing the judgment of state courts.—63 L. R. A. 571, note.

(a) Code, art. 5, § 36, *held* not to authorize the Court of Appeals to determine whether plaintiffs were entitled to relief not claimed in the bill, but claimed to be shown by evidence for defendants to which plaintiffs excepted.—*Minis v. Pennsylvania R. Co.*, 120 Md. 512, 88 Atl. 310.

(b) Prayers based on the evidence and facts in a case, without reference to the pleadings, will be considered on appeal without regarding the state of the pleadings.—*Maryland Apartment House Co. v. Glenn*, 108 Md. 377, 70 Atl. 216.

(c) The Court of Appeals, on appeal from the county court in an action of debt in which two testamentary papers were incidentally offered in evidence, will not review the decision of the orphans' court as to which of those papers was the true will and testament of a decedent.—*Hannon v. State*, 2 Gill 42.

### § 840.—Review of specific questions and particular decisions.

#### *Cross-Reference.*

Matters not necessary to decision or review, see post, § 843.

(a) A prayer directing a verdict for defendant because of plaintiff's contributory negligence necessarily presupposes primary negligence, which would sustain an action but for the concurrence of the contributory negligence, and the special matter for consideration on appeal is whether on the evidence the case should have been submitted to the jury for its determination of the question of contributory negligence, and the question of defendant's negligence is not an issue.—*Booth v. McLean Contracting Co.*, 108 Md. 456, 70 Atl. 104.

(b) Where an order of court granted a railroad company authority to erect and maintain bridges and structures across a canal under the control of the circuit court, according to plans and specifications approved by the Board of Public Works, the effect of the order being merely to relieve the railroad company from the contempt of court which would have been involved in the institution of condemnation proceedings without such permission, the trustees of the canal were not entitled, on appeal therefrom, to raise the question that the plans adopted for the crossings would, if carried out, result in hindering the operation of the canal, contrary to the contract entered into between the state and Congress at the time of the creation of the canal company.—*Chesapeake & O. Canal Co. v. Western Maryland R. Co.*, 99 Md. 570, 58 Atl. 34.

(c) Where, under leave to amend, defendant files a new plea bearing the same number as the original one filed, the latter is considered as withdrawn, and its sufficiency is not reviewable on appeal.—*Medairy v. McAllister*, 97 Md. 488, 55 Atl. 461.

### § 841.—Review where facts are not disputed.

#### *Cross-References.*

Review of cases submitted below on agreed case or statement, see post, § 845.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 842.—Review dependent on whether questions are of law or of fact.**

*Cross-References.*

Power and duty to review facts in general, see post, §§ 987, 991.

Construction of will, see "Wills," § 706.

Review of questions preliminary to admission of evidence in general, see post, § 992.

(a) An order of the Baltimore City Court on petition to rescind an assessment of the appeal tax court that "it appearing to the court that the property in question as shown by the evidence was so far completed on the first day of October as to be liable to assessment, and was legally assessed for taxation," does not distinctly present a question of law which alone is reviewable by the Court of Appeals under Balto. City Code, § 170, but the proper way to present the question is to submit a prayer or to have the order in such form as would present the question of law passed on.—*Isaac Hamburger & Sons v. City of Baltimore*, 106 Md. 479, 68 Atl. 23.

(b) Balto. City Code, § 170, provides that the determination of the Baltimore City Court reviewing a decision of the Appeal Tax Court as to a valuation of property may be appealed to the Court of Appeals, and that the latter court shall hear and determine the questions involved in the appeal. *Held*, that on an appeal from the City Court, where the question of the amount of valuation is involved, such question cannot be reviewed, since the Court of Appeals cannot review a question of fact.—*Consolidated Gas Co. of Baltimore City v. City of Baltimore*, 105 Md. 43, 65 Atl. 628.

(c) Materialmen agreed to accept a certain per cent. in satisfaction of their claims, provided it was payable on the completion of a certain building, and guaranteed. Defendant guaranteed the amount on condition that the compromise was effected with all the creditors of the debtor, as against the building. In an action on the guaranty, evidence of the transactions leading up to the guaranty was admitted without objection. *Held*, that, as the meaning of the guaranty depended on the writing and such parol testimony, it was for the court, sitting

as a jury, to determine whether the signers of the compromise were all the creditors contemplated by the guaranty.—*Slingluff v. Andrew Volk Builders' Supply Co.*, 89 Md. 557, 43 Atl. 759.

**§ 843.—Matters not necessary to decision on review.**

*Cross-References.*

Review unnecessary or ineffectual as grounds for dismissal, see ante, § 790.

(a) The court on appeal from a decree overruling a demurrer to a bill stating a good cause of action for injunction relief to restrain a lessee from opening a highway over the leased premises will not consider whether the bill also states a cause of action for the cancellation of the lease as prayed for.—*Gale v. McCullough*, 118 Md. 287, 84 Atl. 469.

(b) Where a petition for mandamus alleged that a certificate of nomination was void, and sought to compel the board to treat it so, and a demurrer was sustained, on appeal after election the court will not give its construction of the election law.—*Duvall v. Swann*, 94 Md. 608, 51 Atl. 617.

(c) Where, on appeal, questions involved in the review of special exceptions to instructions become mere moot questions, by reason of the instructions being declared erroneous on other grounds, such exceptions will not be considered, notwithstanding Code, art. 5, § 19, provides that, if an appeal shall be taken or a writ of error sued out for several exceptions, the Court of Appeals shall give judgment on every exception if a new trial is to be awarded.—*Strouse v. American Credit Indemnity Co. of New York*, 91 Md. 244, 46 Atl. 328, 1063; *American Credit Indemnity Co. of New York v. Strouse*, Id.

(d) Questions decided in favor of appellant will not be considered, when the judgment must be affirmed on a point decided against him.—*Marshall v. Harwood*, 7 Md. 466.

(e) An instruction that the corporate existence of a party has not been made out will not be reviewed where rulings excluding evidence tending to prove such fact are reversed, even though the evidence actually offered was not, in itself, sufficient

to establish the fact.—Wellersburg, etc., Plank R. Co. v. Bruce, 6 Md. 457.

(f) The orphans' court sent to the county court several issues to be tried, one of which was whether a mortgage executed by one of two executors to the testator had been released in due form of law, and the court directed that the petitioners should be plaintiffs and the debtor executor defendant. On appeal, the court held that the other executor should be made a codefendant, and remanded the case to the orphans' court. In the meantime the debtor executor died, and the surviving executor made return of the mortgage debt alleged to be due by his deceased co-executor. *Held*, that the trial of that issue was no longer necessary.—Marriott v. Handy, 8 Gill 31.

(g) Where a question regularly brought before the appellate court by a bill of exceptions has become, by a decision of other points in the case, a mere abstract proposition of law, the appellate court will not pass upon it.—Brooke v. Townshend, 7 Gill 10.

(h) Where an answer raises a point in the county court, it will be reviewed in this court, though under the state of the pleadings the point ought not to have arisen at all.—Edelen v. State, 4 G. & J. 277.

#### § 844. Review dependent on mode of trial in lower court.

##### *Cross-References.*

Review dependent on procedure in intermediate court, see post, §§ 1087, 1088.

#### § 845.—In general.

##### *Cross-References.*

Necessity of submitting propositions of law, see post, § 846.

Review where facts are not disputed in general, see ante, § 841.

Special verdict or findings, see post, § 850.

(a) Where a case was tried on agreed facts and judgment entered without prayers or anything to indicate that any question of law was submitted to the trial court, there was nothing for review on appeal.—Southern Maryland Nat. Bank of La Plata v. Commissioners of Charles County, 120 Md. 7, 87 Atl. 482.

(b) Where a case has been submitted on an agreed statement of facts, and a plea stating a good defense has been interposed, the appellate court cannot determine whether the facts sustain the plea.—Robey v. State, 94 Md. 61, 50 Atl. 411, 89 Am. St. Rep. 405.

(c) When a cause in ejectment is tried upon an agreed statement of facts, which expressly waives errors and informalities in pleading, an objection that the description of the property in the declaration is insufficient will not be considered on appeal.—Bostwick v. Blades, 59 Md. 231.

(d) On appeal from the circuit court to the Court of Appeals, submitted on an agreed statement of facts, if there is no objection below to the sufficiency of the pleadings, that matter will not be reviewed.—American Coal Co. v. Alleghany, 59 Md. 185; Bostwick v. Blades, *Id.* 231.

(e) Where a case is submitted below upon an agreed statement of facts, the court will not draw any inferences of fact.—McColgan v. Hopkins, 17 Md. 395.

(f) Where an order of the orphans' court, concerning the settlement of the estate of a testator, is appealed from, the appellate court will express an opinion upon the whole case, that a proper account may be taken when the cause is remanded.—Watkins v. Bevans, 6 Md. 489.

(g) Where a case is submitted upon an agreed statement of facts, the court can make no inferences, unless they be of law or such as are undeniable consequences resulting from the facts agreed upon.—Hysinger v. Baltzells, 3 G. & J. 159; Vansant v. Roberts, 3 Md. 119.

#### § 845(a).—Review of judgment based on special verdict.

##### *Cross-Reference.*

See 3 Cent. Dig. App., etc., 3340, and see post, § 850.

#### § 846.—Trial by court in general.

##### *Cross-References.*

Cases submitted on agreed case or statement, see ante, § 845.

Review where facts are not disputed, see ante, § 841.

Waiver of jury, see post, § 849.

On trial by referee, see post, § 848.

Review in equitable actions, see post, § 847.

Waiver of jury, see post, § 849.

What constitutes general or special finding, see post, § 850.

Actions tried before master, see post, § 848.

(a) When a case is tried by the court without the intervention of a jury, the rulings of the court, during the progress of the trial, may be reviewed in the appellate court, provided the questions are properly presented by a bill of exceptions.—*Methodist Episcopal Church v. Browne*, 39 Md. 160; *First Nat. Bank v. National Exchange Bank*, Id. 600.

#### § 847.—Trial in equitable actions.

##### *Cross-References.*

Conclusiveness of verdict, see post, § 1000.

Necessity of assignment of errors, see ante, § 719.

Trial de novo, see post, § 893.

(a) Under Code, art. 5, § 6, which provides that on appeal in equity no objection to the admissibility of evidence or the sufficiency of the bill shall be made in the Court of Appeals unless the record shows that such objection was made by exceptions filed in the court below, the Court of Appeals will decree according to the evidence in the record, which has not been excepted to, whether covered by the averments of the bill or not.—*Schroeder v. Loeber*, 75 Md. 195, 23 Atl. 579, 24 Atl. 226.

(b) On appeal from a decree reforming a deed on the ground of mistake, the true construction of the deed is before the court, as well as the sufficiency of the proof of the mistake.—*Fryer v. Patrick*, 42 Md. 51.

(c) Where there are no exceptions on the ground of want of averments in the bill of complaint, the Court of Appeals is authorized to consider the facts exhibited in the answer as constituting a part of the equity of the cause, though some of them relate to matters in regard to which there are no averments in the bill, under Acts 1832, c. 302, § 5 (Code, art. 5, § 36).—*Thomas v. Doub*, 1 Md. 252.

#### § 848.—Trial by referee.

##### *Cross-Reference.*

Report as special finding, see post, § 850.

#### § 849.—Waiver of jury.

##### *Cross-Reference.*

General or special findings, see post, § 850.

#### § 850.—General or special findings.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

##### *Cross-References.*

Consideration and effect of findings in general, see ante, § 846.

Necessity of finding facts in general, see ante, § 846.

Submission of case on agreed statement of facts in general, see ante, § 845.

#### § 850(a).—Review on appeal from or to particular courts.

##### *Cross-References.*

See "Courts," §§ 185, 190, 202, 220, 387, 389, 399; "Habeas Corpus," § 113; "Removal of Causes," § 119.

#### § 851. Theory and grounds of decision of lower court.

##### *Cross-References.*

Nature and theory of cause in lower court as affecting issues presented for review, see ante, § 171.

Presentation of issues and questions in lower court, see ante, §§ 169-320.

Review dependent on nature and grounds of decision of intermediate court, see post, § 1089.

Showing in record of grounds of decision, see ante, § 495.

Theory and grounds presented to trial court, see ante, §§ 169-179.

#### § 852.—Scope and theory of case.

(a) Where the defendant pleaded two pleas in the court below, one of which was overruled and the other sustained, and the action dismissed, it was *held*, that this court, on appeal by complainant, will examine both pleas, and, if either shows a good defense, will dismiss the bill.—*Teackle v. Gibson*, 8 Md. 70.

#### § 853.—Rulings as law of case.

##### *Cross-Reference.*

Adhering to pleadings as construed by parties, see ante, § 171.

(a) The concession of a prayer for a ruling of law by the opposite party makes the legal proposition announced therein the law of the case, whether such proposition is right or wrong.—*Gans Salvage Co. v. Byrnes*, 102 Md. 230, 62 Atl. 155, 1 L. R. A. (N. S.) 272.

**§ 854.—Reasons for decision.***Cross-References.*

Consideration of opinion in general, see ante, § 717.

(a) Where the jury was properly instructed to find for defendants, contestees of a will, on the issue whether it was executed as required by law, although the reason given was not sufficient, the court will not reverse for error in such instruction, where all the procurable evidence has been produced and satisfies the court that the law was complied with.—*Conrades v. Heller*, 119 Md. 448, 87 Atl. 28.

(b) It is a well-settled rule that rulings excepted to are the only subject of review in the appellate court, no matter how erroneous the reasons therefor given by the inferior court may have been.—*Friend v. Hamill*, 34 Md. 298.

(c) Act 1825, c. 117 (Code, art. 5, § 9), confines the Court of Appeals to the consideration of the point decided by the court below, but not to the reason given for the decision.—*Ellicott v. Peterson*, 4 Md. 476.

(d) If evidence be inadmissible on any ground, when objected to as inadmissible, it ought not to be received; and in reviewing such an objection the Court of Appeals is not confined to the erroneous reasons of the county court for rejecting it.—*Parker v. Sedwick*, 4 Gill 318.

(e) Where a defect of jurisdiction is patent upon the record, a decision sustaining a motion to quash an attachment may be affirmed, though the reason assigned for the motion be erroneous.—*Bruce v. Cook*, 6 G. & J. 345.

(f) The court will affirm a judgment if it be correct, without examining or adopting the reasons assigned for the opinion.—*Yerby v. Lackland*, 6 H. & J. 444.

**§ 855.—Grounds of contention not considered.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 856.—Grounds for sustaining decision not considered.***Cross-References.*

See ante, § 854.

Scope and effect of motion presenting objection, see ante, § 241.

Scope and effect of objection, see ante, § 232.

(a) A special exception to a refused instruction on the ground that it was not sustained by evidence is not essential to enable the Court of Appeals to consider the point in reviewing a general exception to the refusal of the instruction.—*Mount Vernon Brewing Co. v. Teschner*, 108 Md. 152, 69 Atl. 702.

(b) The Court of Appeals will not hold that an attachment was rightly quashed because the record does not contain the voucher on which the writ was issued, where the record shows that a voucher was in fact filed, and the writ was quashed expressly on another ground which was insufficient.—*Johnson v. Stockham*, 89 Md. 368, 43 Atl. 943.

**§ 857. Extent of review dependent on mode of review.***Cross-References.*

Election between remedies, see ante, § 12.  
Scope of decision and extent of relief, see post, §§ 1111-1114, 1116-1121.

**§ 857(a). Exceptions or motion for new trial.***Cross-References.*

See post, § 860.

**§ 858.—Appeal.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 859.—Writ of error.***Cross-Reference.*

Review of questions of fact in general, see post, §§ 987, 1024.

(a) On a writ of error to the Court of Appeals, the court will examine the entire record, and, if there is error in any point, will reverse the judgment.—*Speake v. Shepard*, 6 H. & J. 81.

**§ 860.—Exceptions or motion for new trial.****§ 861.—Cases or questions reserved or certified.***Cross-References.*

Certificate as to grounds of appeal, see ante, § 366.

What cases may be reserved or certified, see ante, §§ 308-312.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 862. Extent of review dependent on nature of decision appealed from.**

*Cross-References.*

Appeal from interlocutory judgments or orders as bringing up other judgments or orders, see post, § 874.

Appointment of administrators, see "Executors and Administrators," § 22.

Proceedings for setting apart allowance to widow, see "Executors and Administrators," § 194.

**§ 863.—In general.**

(a) An appeal from an order quashing a summons and the return of the officer thereon brings up for review the record disclosing the question passed on and decided by the trial court.—*Long v. Hawken*, 114 Md. 284, 79 Atl. 190.

(b) Under Code, art. 16, § 200, giving a right of appeal from an order appointing a receiver pendente lite, as provided by section 201, authorizing the appointment of a receiver on the court's own motion or on application, the rule that the court will not appoint a receiver until the defendant is first heard, unless the necessity be of the most stringent character, is one which can be enforced on appeal only by appeal from the order appointing the receiver.—*Baker v. Baker*, 108 Md. 269, 70 Atl. 418.

(c) On appeal from an order dismissing exceptions to the ratification of a resale of mortgaged property, on the ground that the exceptants were not authorized to except thereto, the sufficiency of the exceptions will not be determined.—*Werner v. Clark*, 108 Md. 627, 71 Atl. 805.

(d) Where an order discharging a receiver embraced items of expense which plaintiff contended were not properly chargeable to him, the court on appeal would review the proof on such subject, though it would incidentally involve a consideration of the propriety of appointing the receiver, which ordinarily is not reviewable.—*Horn v. Bohn*, 96 Md. 8, 53 Atl. 576.

(e) Where appeal is taken from an order made on a motion to dissolve a preliminary injunction, the only question presented is the propriety of dissolving the injunction, and the matters which would be involved in a final hearing are not submitted.—*Blundon v. Crosier*, 93 Md. 355, 49 Atl. 1.

(f) A final decree is not open for review upon appeal from an order ratifying a sale made in execution of the decree.—*Vickers v. Tracey*, 22 Md. 196.

**§ 864.—On appeal from final judgment.**

(a) An order to the clerk, to "enter an appeal" to the Court of Appeals "in the above-entitled cause," filed after the passage of the final decree in the cause, without indicating from what opinion, decree, or order of the court the appeal is taken, is regarded as an appeal from the final decree; and an appeal from such a decree opens for revision all previous orders in the case from which no previous appeal has been taken, under Code, art. 5, § 28.—*Meakin v. Duvall*, 43 Md. 372.

(b) A final decree is not open for review upon appeal from an order ratifying a sale made in execution of the decree.—*Vickers v. Tracey*, 22 Md. 196.

(c) Verdict was given for a certain sum. Defendant moved for a new trial, and his motion was allowed, unless the plaintiffs would remit a portion of the verdict. The plaintiffs did so, and judgment was entered for the diminished sum, from which judgment appeal was taken. *Held*, that the final judgment was a judgment on the verdict, and that an appeal from this judgment brought before the appellate court the exceptions taken at the trial, in the same manner as if the motion for a new trial had been unconditionally refused and the appeal had been taken on the first judgment for the unreduced sum.—*Baltimore v. Reynolds*, 18 Md. 270.

**§ 865.—On appeal from judgment by confession or default or from orders relating thereto.**

*Cross-References.*

Appealability of judgment by default, see ante, § 127.

Appealability of judgment on consent, offer or admission, see ante, § 125.

(a) Code, art. 16, § 152, provides that a defendant against whom a bill has been taken pro confesso may appear before final decree and file his answer, and such proceedings shall be had as might have been had in case the answer had been filed be-

fore the passage of the decree. Section 149 gives the court power to require that the allegations of a bill taken pro confesso be supported by proof. *Held*, that where the defendant (against whom a decree pro confesso had been rendered) appeared, demurred, and pleaded, and testimony was taken, he was entitled to have the action of the court on the demurrer and pleas reviewed as well as the decree.—*Turpin v. Derickson*, 105 Md. 620, 66 Atl. 276.

(b) In an action on a replevin bond, where judgment has been entered by default, and stands unreversed, and an appeal is taken from an order overruling a motion to strike out the judgment, the appellate court cannot examine into the validity of the bond.—*Stansbury v. Keady*, 29 Md. 361.

**§ 866.—On appeal from decision on motion for dismissal or nonsuit or direction of verdict.**

*Cross-Reference.*

Matters of evidence considered in determining question, see ante, § 837.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 867.—On appeal from decision on motion for new trial or after grant of new trial.**

*Cross-References.*

Order granting new trial as precluding appeal from judgment, see ante, § 13.

Questions presented when there is no appeal from order on motion, see ante, § 864.

Reasons for decision, see ante, § 854.

Review of other orders on appeal from order on motion, see post, § 874.

Review on appeal from final judgment, see post, § 870.

Review on motion for new trial, see ante, § 860.

Review when included in appeal from final judgment, see post, § 871.

**(B) INTERLOCUTORY, COLLATERAL, AND SUPPLEMENTARY PROCEEDINGS AND QUESTIONS.**

*Cross-References.*

Reviewability on appeal from final judgment as affecting right to separate appeal, see ante, § 74.

On appeal from allowance of alimony or suit money, see "Divorce," § 286.

**§ 868. Power to review in general.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 869. On appeal from final judgment.**

*Cross-References.*

Necessity of including in entry of appeal, see ante, § 433.

Specification in notice of appeal, see ante, § 420.

**§ 870.—Interlocutory proceedings brought up in general.**

*Cross-References.*

Review on separate appeal from interlocutory decision, see post, § 874.

Included in appeal, see post, § 871.

Review of sufficiency of pleadings, on appeal from order on motion for new trial, see ante, § 867.

(a) On appeal from a final judgment, rulings of the trial court on matters of law may be reviewed without any special exception, and no bill of exceptions or writ of error is necessary to bring up for review the ruling on a demurrer to a pleading.—*Newbold v. Green*, 122 Md. 648, 90 Atl. 513.

(b) Under Code, art. 5, § 28, authorizing review of previous orders on appeal from a final order, an order directing the receiver to retain a sum to abide liquidation of a suit pending against him and to defend that suit, having been appealed in time, opened for review the previous order allowing the suit against the receiver and an order refusing to rescind it.—*Emory v. Faith*, 113 Md. 253, 77 Atl. 386.

(c) An order overruling a demurrer to an entire bill is not reviewable unless specifically appealed from.—*Reck v. Reck*, 110 Md. 497, 73 Atl. 144.

(d) Under the provisions of Code, art. 5, § 26, defendants in an equity case may appeal from a final decree therein, though they were in default and the procedure was had without contest, and under § 28, providing that on appeal from a final decree all previous orders passed in the cause shall be open for revision, the validity of a decree pro confesso in the case may be determined.—*Bailey v. Jones*, 107 Md. 405, 68 Atl. 881.

(e) Where an order on the settlement of accounts of trustees provided that the wives of certain bankrupt beneficiaries were not entitled to dower, authorized commissions to the trustees, and, after ruling on matters presented by other parties in interest, reserved a question for further consideration, and required the auditor to restate his ac-

count so as to conform to the terms of the order, it was not a final order, but was an appealable order, within Code, art. 5, § 27, and, no appeal having been taken therefrom, it was reviewable on appeal from the final order, as authorized by § 28.—*Slingluff v. Hubner*, 101 Md. 652, 61 Atl. 326.

(f) A decree overruling a demurrer to a bill by the Mayor and City Council of Baltimore for leave to deposit money in court in condemnation proceedings is not reviewable on an appeal from a decree entered after answer and hearing, under Code, art. 5, § 28, providing that, on an appeal from a final decree, all previous orders shall be open to revision, but can be reviewed only on a direct appeal from such decree, under § 26, allowing an appeal from any final decree.—*Gardner v. City of Baltimore*, 96 Md. 361, 54 Atl. 85.

(g) The rulings on an issue of jurisdiction, based on the alleged nonresidence of defendant, as well as the rulings in the main trial, are open to review on appeal from the final judgment if the judgment in each case is against defendant.—*Gambrill v. Schooley*, 95 Md. 260, 52 Atl. 500, 63 L. R. A. 427.

(h) Where an order allowing a rehearing on exceptions to a mortgage sale is not filed within 60 days from its passage, and the petition for the order has not been filed, and a motion that the order and petition be filed as of the date of the passage of the order is allowed, on an appeal from the final action of the court in the suit the allowance of the motion may be reviewed under Code, art. 5, § 28, allowing a review of all orders in a cause on appeal from a final decree.—*Keifer Heirs v. Reichert*, 93 Md. 97, 48 Atl. 460.

(i) Where there are questions on demurrer, and also issues of fact, involved in the trial of a case, and the demurrer is determined adversely to the party appealing, and verdict and judgment are against him on the facts, an appeal from the final judgment takes the ruling on the demurrer up for review.—*Ellinger v. City of Baltimore*, 90 Md. 696, 45 Atl. 884.

(k) So much of a decree as exonerates certain lots from a mortgage until exhaustion of other premises subject to the mortgage is in the nature of a final decree, and there-

fore not reviewable under Code, art. 5, § 26, but only on appeal directly therefrom, under § 28.—*Hopper v. Smyser*, 90 Md. 363, 45 Atl. 206; *Smyser v. Hooper*, Id.

(l) An order appointing a committee for an habitual drunkard is a final order, within Code, art. 5, § 26, so as to be reviewable, under § 28, only on a direct appeal from the order, and not on appeal from a subsequent order.—*Tome v. Stump*, 89 Md. 264, 42 Atl. 902.

(m) The words "all previous orders," as used in Code, art. 5, § 28, relating to the effect of an appeal as opening up all previous orders in the case, refer to all previous orders and decrees constituting a part of the preliminary proceedings leading up to the final decree.—*Bull v. Pyle*, 41 Md. 419.

(n) Upon an appeal from a decree finally ratifying a partition made by commissioners, a previous decree directing the partition to be made is open for review, though the appeal from such decree, which was alleged to have been obtained by surprise or mistake, was not entered within the time required, after the discovery of the mistake.—*Bull v. Pyle*, 41 Md. 419.

(o) On a review of a final order by appeal, all previous orders passed in the cause may be reviewed by the Court of Appeals.—*Barton v. Higgins*, 41 Md. 539.

(p) A final decree is not open for review upon appeal from an order ratifying a sale made in execution of the decree.—*Vickers v. Tracey*, 22 Md. 196.

(q) Upon appeal from a final decree, dismissing the bill, a previous order or decree sustaining and allowing demurrers to the bill, which had been filed by some of the defendants, may be reviewed.—*Stem v. Cox*, 16 Md. 533.

(r) An appeal from the final judgment authorizes the review also of the rulings on demurrers.—*Tucker v. State*, 11 Md. 322.

(s) When the ruling on a demurrer and the judgment were both against the appealing party, they will both be reviewed, although the appeal is from the judgment only.—*Tucker v. State*, 11 Md. 322.

(t) The right of an immediate appeal from any decree or order, except a final decree, or



order in the nature of a final decree, was taken away by the act of 1830, and though restored by the act of 1841, yet the party may waive it, and, on appeal from the final decree, allege error in all previous interlocutory decrees or orders passed in the cause.—*Ware v. Richardson*, 3 Md. 505, 56 Am. Dec. 762. (See Code, art. 5, §§ 27, 28.)

(u) Objections to the competency of a witness by whose testimony a mere interlocutory order to account, not a final adjudication upon the rights of the parties, and not the subject of an appeal, was obtained, does not come too late, in the Court of Appeals, although more than the time prescribed for taking an appeal has elapsed between the passage of the order and the appeal from the final decree.—*Hungerford v. Bourne*, 3 G. & J. 133.

**§ 871.—Interlocutory and intermediate judgments and orders included in appeal.**

**§ 872.—Appeals from particular final decisions.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 873.—Subsequent orders and proceedings.**

(a) Verdict was given for a certain sum. Defendant moved for a new trial, and his motion was allowed, unless the plaintiff would remit a portion of the verdict. The plaintiffs did so, and judgment was entered for the diminished sum, from which judgment appeal was taken. *Held*, that the final judgment was a judgment on the verdict, and that an appeal from this judgment brought before the appellate court the exceptions taken at the trial, in the same manner as if the motion for a new trial had been unconditionally refused and the appeal had been taken on the first judgment for the unreduced sum.—*Baltimore v. Reynolds*, 18 Md. 270.

**§ 874. On separate appeal from interlocutory judgment or order.**

*Cross-References.*

Review on appeal from final judgment, see ante, § 870.

Questions presented for review on appeal from interlocutory orders in general, see ante, § 863.

Questions reviewable in general, see ante, § 867.

Subsequent orders, see post, § 874.

(a) The court on appeal from an *ex parte* order appointing a receiver passed on the bill and affidavit alone may consider only the case made by the bill, and not a subsequent *non pro tunc* order, brought before the appellate court by writ of diminution.—*Baltimore Skate Mfg. Co. v. Randall*, 112 Md. 411, 76 Atl. 491.

(b) Upon an appeal from an order of the court of chancery, determining a question of right between the parties, and directing an account to be stated on the principle of such determination, the Court of Appeals can only inquire into the correctness of the principles announced by the chancellor as the basis of the auditor's report.—*Goodburn v. Stevens*, 5 Gill 1.

**§ 875. On appeal from order made after judgment.**

*Cross-Reference.*

Order enforcing, vacating, or refusing to vacate previous judgment or order, see post, § 876.

(a) On appeal from an order ratifying a judicial sale, questions of the jurisdiction of the court to pass the decree and irregularity in the proceedings cannot be reviewed; such questions are matters for consideration on appeal from the decree of sale.—*Vollum v. Beall*, 117 Md. 617, 83 Atl. 1095.

(b) Where an appeal from an order dissolving an injunction and discharging a receiver was not taken in time, but a subsequent order, appealed from, provided that the costs should be paid as provided in the first order, the questions raised thereby were presented by the appeal from the second order.—*Horn v. Bohn*, 96 Md. 8, 53 Atl. 576.

(c) After entering a decree for plaintiff, the cause was referred to an auditor to state an account, and to his report exceptions were filed, which raised questions disposed of by the decree. *Held*, that said questions were not reviewable on appeal from an order overruling the exceptions.—*White v. Hook*, 87 Md. 733, 40 Atl. 901.

(d) Under an appeal from an order overruling exceptions to a sale under a decree the appellate court will not determine the

sufficiency of the evidence to support the decree.—*Harrison v. Morton*, 87 Md. 671, 40 Atl. 897.

(e) On appeal from an order distributing proceeds of sale of certain property, neither the decree determining in whom the title was, nor that authorizing the sale, is open for review.—*Green v. Western Nat. Bank*, 86 Md. 279, 38 Atl. 131.

**§ 876. On appeal from order enforcing, vacating, or refusing to vacate previous judgment or order.**

(a) The regularity and validity of a decree cannot be questioned on appeal from an order overruling exceptions to and ratifying a sale made thereunder.—*Benson v. Yellott*, 76 Md. 159, 24 Atl. 451.

(b) On appeal from a decree distributing the proceeds of the sale of land sold under a former decree in the suit from which no appeal was taken, the validity of such former decree will not be inquired into.—*Porter v. Askew*, 11 G. & J. 346.

(c) The appellate court will not determine the conflicting claims of the parties to a bill for the sale of mortgaged premises, on appeal from a decree which simply orders a sale, and that the proceeds be brought into court for distribution.—*Fitzhugh v. McPherson*, 9 G. & J. 51.

**(C) PARTIES ENTITLED TO ALLEGE ERROR.**

*Cross-References.*

Effect on determination of cause of errors on part of appellant or plaintiff in error, see post, §§ 1137, 1164.

Errors favorable to party complaining, see post, § 1033.

Errors waived in appellate court, see post, §§ 1075-1079.

Criminal prosecutions, see "Criminal Law," §§ 1136, 1137.

In suits for divorce, see "Divorce," § 184.

On appeal from allowance of alimony or suit money, see "Divorce," § 286.

On review in United States Circuit Court of Appeals, see "Courts," § 406.

**§ 877. Appellant or plaintiff in error.**

*Cross-References.*

Error affecting only co-party, see post, § 880.

Right of persons not parties to allege error, see post, § 879.

(a) Where three defendants in an action in tort requested the court to rule that plaintiff's evidence was insufficient to warrant the jury in finding against them, and the court granted it as to two but refused it as to one, the latter could not question the correctness of the ruling as to the others by asserting that there was evidence against them.—*Medairy v. McAllister*, 97 Md. 488, 55 Atl. 461.

(b) Parties to partition proceedings cannot complain that a moiety of the partitioned property was assigned to several as co-tenants, where the latter do not complain.—*Godwin v. Banks*, 89 Md. 679, 43 Atl. 863.

(c) Appellant or plaintiff in error cannot assign as error erroneous rulings prejudicial to others, but not prejudicial as to him.—*Pratt v. Johnson*, 6 Md. 397.

**§ 878. Appellee, respondent, or defendant in error.**

*Cross-References.*

Assignment of cross-errors, see ante, § 747.

Scope and extent of relief, see post, § 1117.

Taking cross-appeal or writ of error, see ante, § 14.

(a) The question of error in the rejection of plaintiff's prayers held not before the court for review on appeal by defendant alone.—*American Towing & Lightering Co. v. Baker-Whiteley Coal Co.*, 111 Md 504, 75 Atl. 341.

(b) On appeal from an order of the trial court overruling a demurrer or plea to the bill and requiring the defendants to answer within a fixed time, the appellate court, being strictly an appellate tribunal, has no power, at the suggestion of the appellees who have not appealed from the order, to reverse that part of it which gives the defendant time to answer, and pass a final decree on the bill.—*Trego v. Skinner*, 42 Md. 426.

(c) An attorney claimed, out of funds in equity, the amount awarded to a certain judgment, because the judgment had been entered for his use, and because reasonable compensation for his services would amount to the sum claimed. The court, by its order,

allowed him an amount less than that awarded by the auditor to this judgment, and the other parties appealed. *Held*, that this order, by allowing such less sum, virtually struck out the entry of the judgment to the attorney's use, and that he, not having appealed, could not, upon the appeal of the other parties, insist that the court below, as a court of equity, had no authority to strike out the use.—*Gordon v. Miller*, 14 Md. 204.

(d) Exceptions taken by appellee or respondent will not be considered in the absence of a separate or cross-appeal.—*Rider v. Gray*, 10 Md. 282.

(e) An appellee, in order to present adverse rulings below, such as the sustaining of a demurrer to his plea, must take a cross appeal.—*State v. Milburn*, 9 Gill 97.

(f) Where the appellate court reverses the decree of the court of chancery, it exercises, as it were, an original equity jurisdiction, and places that decree on the record which the chancellor ought to have given; and, upon cross appeals from the same decree, errors of which one party below could not have availed himself, because not excepted to as required by law, may be corrected by the appellate court in remodeling the decree upon the appeal of the other party.—*Diffenderfer v. Winder*, 3 G. & J. 311.

(g) An appellate court may rectify all mistakes and grant relief to an appellee as well as to appellant, though the appellee has not asked it.—*Hopper v. Coleston*, 1 Bland 322, note.

### § 879. Persons not parties in appellate court.

#### *Cross-References.*

Right to allege errors affecting persons not parties, see ante, § 877.

Scope and extent of relief, see post, § 1119.

### § 880. Error affecting only co-party.

#### *Cross-References.*

Error not affecting appellant or plaintiff in error in general, see ante, § 877.

Relief between co-parties, see post, § 1118.

Rulings favorable to appellant's co-party, see ante, § 877.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 881. Estoppel to allege error.

#### *Cross-References.*

Estoppel affecting right of review, see ante, §§ 153-168.

Proceedings in appellate court inconsistent with objection, see post, § 1076.

By administrator, see "Executors and Administrators," § 455.

Estoppel to object to evidence offered by adverse party, see "Trial," § 75.

Estoppel to object to instructions of adverse party, see "Trial," § 272.

Waiver of objection to adverse rulings at trial, see "Trial," §§ 406-427.

### § 882.— Error committed or invited by party complaining.

(a) Where a witness called for plaintiff testified that his expenses as a witness had been paid by defendant company, whereupon he was not interrogated by plaintiff as to material facts, *held* that defendant could not complain of the admission of such testimony.—*Earp v. Phelps*, 120 Md. 282, 87 Atl. 806.

(b) A party cannot complain of instructions requested by him.—*Cushwa v. Burgess & Commissioners of Williamsport*, 117 Md. 306, 83 Atl. 389.

(c) A party cannot complain of a correct instruction, though it conflicts with erroneous instructions given at his instance.—*United Fruit Co. v. New York & Baltimore Transp. Co.*, 104 Md. 567, 65 Atl. 415.

(d) A party cannot complain of the granting at the instance of his opponent of essentially the same instruction which was granted at his own request.—*Iron Clad Mfg. Co. v. Thomas B. Stanfield & Son*, 112 Md. 360, 76 Atl. 854.

(e) A party cannot assign as error a submission of an issue to the jury at his own request.—*Town of Frostburg v. Hitchins*, 99 Md. 617, 59 Atl. 49.

(f) Where a question of fact is submitted to the jury under the appellant's requested instruction, an objection cannot be raised on the appeal to the finding thereon.—*James Clark Distilling Co. v. City of Cumberland*, 95 Md. 468, 52 Atl. 661.

(g) A party cannot complain of a charge given at his request.—*Lewis v. Tapman*, 90 Md. 294, 45 Atl. 459, 47 L. R. A. 385.

(h) Though, on a bill to construe a will, a decision as to the rights of the parties in

certain future contingencies is premature, it will not be reversed when appellants themselves sought to have the point decided below, and have now sought it above, only raising the objection mentioned after being defeated in both courts.—*Devecmon v. Shaw*, 70 Md. 219, 16 Atl. 645.

(i) When instructions granted by the court give to the party the benefit of all the law asked by his prayers, he cannot be heard to object to such instructions because they did not give more.—*Repp v. Berger*, 60 Md. 14.

(j) When it is open to a party to prove a fact by direct evidence, and he has failed to offer any such evidence, the judgment of the trial court will not be reversed because the court erred in excluding testimony indirect and inconclusive, and which, under the circumstances of the case, did not operate to the prejudice of the defendants.—*Buschman v. Codd*, 52 Md. 202.

(k) A party to a cause, after excepting to an instruction as erroneous, will not be heard to complain because it was afterwards revoked, and withdrawn from the jury.—*Sittig v. Birkestack*, 38 Md. 158.

(l) A party cannot predicate error on instructions given at his own request.—*Philadelphia, W. & B. R. Co. v. Harper*, 29 Md. 380.

(m) Where improper evidence is given in the court below by consent of parties, its competency will not be questioned on review.—*Edelen v. Hardey*, 7 H. & J. 61.

### § 883.—Assent to proceeding.

#### *Cross-References.*

Facts admitted or conceded in lower court, see ante, § 176.

Judgment by confession, see ante, § 124.

Waiver of objections to pleadings, see "Pleading," §§ 400-437.

Waiver of objections to rulings and proceedings at trial, see "Trial," §§ 406-427.

(a) Where, in an action for pollution of a spring by the damming of a stream, a conceded prayer of plaintiff authorizes recovery regardless of contributory negligence, defendant may not complain of the refusal of an instruction raising that as a defense.—*Groh v. South*, 119 Md. 297, 86 Atl. 1036.

(b) In a suit for an accounting by one mortgagee against another who has sold the

property under a power of sale, an owner of the equity of redemption in part of the property, not having filed exceptions to the auditor's report, and not having set up any claim adverse to the mortgagees in the court below, is not entitled to make such claim upon appeal.—*Rappanier v. Bannon*, 8 Atl. 555. (Not reported in Maryland Reports.)

### § 884.—Recognition of validity of proceeding.

#### *Cross-References.*

Waiver of objections to pleadings, see "Pleading," §§ 400-437.

Waiver of objections to rulings and proceedings at trial, see "Trial," §§ 406-427.

(a) The court having given, without exception thereto, plaintiff's prayer, leaving it to the jury to find whether facts existed which would authorize plaintiff to recover, this cannot be reviewed, though defendant asked and excepted to the refusal of a prayer asking the court to rule that there was no sufficient evidence to entitle plaintiff to recover.—*Baltimore Briar Pipe Co. v. Eisenhauer*, 107 Md. 704 (mem. report), 66 Atl. 623 (full report).

### (D) AMENDMENTS, ADDITIONAL PROOFS, AND TRIAL OF CAUSE ANEW.

#### *Cross-References.*

Amendment in lower court pending appeal, see ante, § 440.

Amendment of record, see ante, §§ 653-656.

Accounting of executor or administrator, see "Executors and Administrators," § 510.

Allowance of claims against decedent's estate, see "Executors and Administrators," § 256.

Amendment of pleading as to citizenship for purpose of jurisdiction of federal courts, see "Courts," § 322.

Criminal prosecutions, see "Criminal Law," §§ 1138, 1139.

Drainage proceedings, see "Drains," § 36.

Election contests, see "Elections," § 305.

In admiralty, see "Admiralty," § 117.

In suits for divorce, see "Divorce," § 184.

On appeal from county courts, see "Courts," § 185.

On appeal from decision of county board, see "Counties," § 58.

On appeal from municipal courts, see "Courts," § 190.

On appeal from probate courts, see "Courts," § 202.

Revocation of letters of administration, see "Executors and Administrators," § 32.

### § 885. Amendment of proceedings of lower court.

#### *Cross-References.*

Amendments regarded as made, see post, § 889.

On trial de novo, see post, § 896.

### § 886.— In general.

### § 887.— As to parties.

#### *Cross-Reference.*

Amendments regarded as made, see post, § 889.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 888.— As to pleadings.

#### *Cross-References.*

Amendments regarded as made, see post, § 889.

Allegation as to citizenship for purpose of jurisdiction of federal courts, see "Courts," § 322.

(a) When a case has been tried below upon a claim which is defective, not merely in form, but in substance, without any application there presented for amendment, and an appeal is taken, if the defect should be amended in the court above, a decision upon the amended record will not be a decision upon the case as tried below, and brought up by appeal, but one presenting very different questions, and the amendment will not be allowed.—*Baker v. Winter*, 15 Md. 1.

### § 889. Amendments regarded as made.

#### *Cross-Reference.*

Presumptions as to amendments, in general, see post, § 918.

### § 890. Further pleadings or new pleadings.

#### *Cross-Reference.*

On trial de novo, see post, § 897.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 891. Additional proofs.

#### *Cross-References.*

Evidence on trial de novo, see post, § 898.

Evidence to show matters or proceedings occurring at or since trial not shown by record, see ante, § 715.

Matters and evidence considered in determining questions, see ante, § 837.

Matters not apparent of record, see ante, §§ 712-717.

(a) The appellate court will not consider a petition and affidavits setting up alleged newly discovered evidence.—*Baltimore & O. R. Co. v. State*, 107 Md. 642, 72 Atl. 340.

(b) Cases must be dealt with by the appellate court as they are presented by the record, and it has no power, while reviewing an order from which an appeal is taken, to receive evidence, or to remand the record to the court below to hear testimony, on questions that in no way reflect on the only issue brought to the appellate court.—*Stanley v. Safe-Deposit & Trust Co.*, 87 Md. 450, 40 Atl. 53.

(c) Evidence cannot be presented for the first time on appeal.—*Hopper v. Coleston*, 1 Bland 322, note.

### § 892. Trial de novo.

#### *Cross-References.*

Questions considered on appeal, see ante, § 858.

Review of decision on trial de novo in intermediate court, see post, § 1088.

Hearing de novo in highway proceedings, see "Highways," § 59.

Nature of jurisdiction of appellate court to hear case de novo on appeal, see "Courts," § 206.

On appeal from justices' courts, see "Justices of the Peace," §§ 171-181.

On appeal from municipal courts, see "Courts," § 190; "Wills," §§ 374-382.

On appeal from probate courts, see "Courts," § 202.

On appeal in condemnation proceedings, see "Eminent Domain," § 261.

Right to trial by jury, see "Jury," § 17.

### § 893.— Cases triable in appellate court.

### § 894.— Proceedings to obtain trial on evidence taken in lower court.

### § 895.— Scope of inquiry.

### § 896.— Amendments.

### § 897.— Further pleadings or new pleadings.

### § 898.— Evidence.

#### *Cross-Reference.*

Effect of supersedeas or stay of proceedings, see ante, § 485.

### § 899.— Conduct of trial.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## (E) PRESUMPTIONS.

#### *Cross-References.*

On motion to dismiss, see ante, § 801.

As to prejudicial nature of error, see post, § 1031.

On review of decisions of intermediate courts, see post, § 1091.

Accounting of executor or administrator, see "Executors and Administrators," § 510.

Action to determine validity of will, see "Wills," § 400.

As to proceedings before referee in bankruptcy, see "Bankruptcy," § 228.

Bastardy proceedings, see "Bastards," § 92.

Criminal prosecutions, see "Criminal Law," §§ 1141-1144.

Effect of constitutional provision relating to actions for libel, see "Libel and Slander," § 128.

Election contests, see "Elections," § 305.

Establishment of boundaries, see "Boundaries," § 44.

Highway proceedings, see "Highways," § 58.

In action for dower, see "Dower," § 110.

In suits for divorce, see "Divorce," § 184.

On appeal from allowance of alimony or suit money, see "Divorce," § 286.

On appeal from grant or refusal of license, see "Intoxicating Liquors," § 75.

On appeal from justice's court, see "Justices of the Peace," § 188.

### § 900. Nature and extent in general.

(a) Where the rule under which the court acted is not put in the record, the Court of Appeals is bound to presume that the court acted rightly and in accordance with its rules.—Tyler v. Murray, 57 Md. 418.

(b) The Circuit Court of Baltimore City being a court of general jurisdiction, it will be presumed on appeal that its proceedings are regular, and whatever it has done was legally and rightfully done, unless the contrary be shown by the record.—Schultze v. State, 43 Md. 295.

(c) The proceedings below will be presumed to be correct unless the contrary appears by the record.—Parrish v. State, 14 Md. 238.

(d) It will be presumed that the court below discharged its duty according to the rules and practice of the court, unless the contrary is shown.—Calvert v. Cox, 1 Gill 95.

### § 901. Burden of showing error.

#### *Cross-References.*

Affirmance where error not shown, see post, §§ 1135, 1136.

Burden to show prejudice from error, see post, § 1032.

Exercise of discretionary powers, see post, § 948.

(a) The burden is on the party alleging error to show it affirmatively by the record.—State v. Harrison, 9 G. & J. 15; Alexander v. Webster, 6 Md. 359.

### § 902. Matters shown by record.

### § 903.—In general.

(a) Where the court below state that a cause at the time of the decree stood ready for hearing, the Court of Appeals will presume that all prerequisites were complied with.—Rigden v. Martin, 6 H. & J. 403.

### § 904.—Recitals.

#### *Cross-Reference.*

See ante, § 903.

### § 905. Proceedings not included in record.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 906. Facts or evidence not shown by record.

#### *Cross-Reference.*

Necessity of incorporating evidence in record, in general, see ante, § 515.

### § 907.—In general.

(a) In the absence of any contrary facts in the record, it is presumed that the ruling of the lower court was correct.—In re Hagerstown Trust Co., 119 Md. 224, 86 Atl. 982.

(b) In absence of a contrary showing in the record, it must be presumed on appeal that the trial court had adequate ground for its action.—Middendorf v. Baltimore Refrigerating & Heating Co. of Baltimore City, 117 Md. 17, 82 Atl. 1047.

(c) On appeal, a ruling of the trial court on a motion is presumed to have been proper, in the absence of a showing to the contrary.—Wilkin Mfg. Co. v. Melvin, 116 Md. 97, 81 Atl. 879.

(d) The Court of Appeals must presume, in the absence of a showing to the contrary, that the orphans' court properly exercised its powers in allowing commissions to an executor.—In re Watts' Estate, 108 Md. 696, 71 Atl. 316.

(e) Where a judgment in an action tried by the court recites that it is entered "on legal and satisfactory proof of the correctness and amount of the claim for which the suit was brought being produced in court," it will be presumed on review that the necessary and proper proof was before the court, there being nothing in the record to show the contrary.—Coulbourn Bros. v. Boulton, 100 Md. 350, 59 Atl. 711.

(f) Where on appeal the evidence is not brought up, the court will presume that it supports the verdict, finding, judgment or decree.—*Darrin v. Hoff*, 99 Md. 491, 58 Atl. 196.

(g) In the absence of a bill of exceptions or statement of facts in the record on appeal showing the evidence introduced, the verdict, findings, or judgment will be presumed to have been warranted by the evidence.—*Southern Building & Loan Ass'n v. Price*, 88 Md. 155, 41 Atl. 53, 42 L. R. A. 206.

(h) The appellate court cannot assume that a bond was raised or altered after delivery where there is nothing in the record to show it, and can have no judicial knowledge of the fact if it existed.—*Edelin v. Sanders*, 8 Md. 130.

#### **§ 908.—Exhibit or proof of instrument sued on.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### **§ 908(a).—Regularity or legality of transaction.**

##### *Cross-Reference.*

See ante, § 907.

#### **§ 909.—Particular facts necessary to sustain decision.**

(a) On appeal from an order overruling a demurrer to a bill to enjoin a street assessment, in the absence of any allegations on the question of notice, it will be assumed that the property owners were given proper notice pursuant to the statute.—*Town of Hyattsville v. Smith*, 105 Md. 318, 66 Atl. 44.

(b) Where a release has been executed by a clerk, exempting a railroad company from liability for damages to the goods of the firm who employed him for one year, and no evidence of his authority appears in the record, it must be presumed that the court below acted correctly, and that there was such authority.—*McCann v. Baltimore & O. R. Co.*, 20 Md. 202.

#### **§ 910. Grounds and form of action or defense.**

##### *Cross-References.*

Questions presented for review, see ante, § 673.

Limitations, see "Limitation of Actions," § 202.

Res judicata, see "Judgment," § 958.

(a) Where the record does not disclose any legal cause of action, the Court of Appeals cannot assume, in the absence of sufficient averment, that any good cause of action exists.—*Lester v. Hardesty*, 29 Md. 55.

#### **§ 911. Organization and jurisdiction of lower court.**

##### *Cross-References.*

Questions presented for review, see ante, § 674.

Process or notice, see post, § 914.

(a) On appeal from an order revoking letters testamentary and appointing caveator administrator pending determination of the caveat, it will be presumed that the court properly decided all jurisdictional matters, including the fact that notice of the hearing of the application for probate had been given.—*Grill v. O'Dell*, 111 Md. 64, 73 Atl. 876.

#### **§ 912. Venue.**

##### *Cross-References.*

Order of revivor, see post, § 920.

Questions presented for review, see ante, § 675.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### **§ 913. Parties.**

##### *Cross-Reference.*

Questions presented for review, see ante, § 676.

(a) It will be assumed that the attorney prosecuting the suit for a municipal corporation had authority so to do, though his warrant does not appear in the record on appeal.—*McMechen v. City of Baltimore*, 2 H. & J. 41; *City of Baltimore v. Baltimore & Y. Turnpike Co.*, 80 Md. 535, 31 Atl. 420.

#### **§ 914. Process and appearance.**

##### *Cross-Reference.*

Questions presented for review, see ante, § 677.

(a) Since, on motion to rescind an order for publication service and on answer thereto, only movant could have the motion set down for hearing on appeal it must be assumed that it was done at movant's instance.—*Hollander v. Central Metal & Supply Co. of City of Baltimore*, 109 Md. 131, 71 Atl. 442.

(b) On an appeal from an order granting the appointment of a receiver, on a petition filed in an equity suit to the proceedings of which the petition refers, it will be presumed, in order to sustain the action of the court, the record in the appellate court not showing that all the necessary parties were not in court, that all necessary parties had been actually or constructively served with process.—*Baker v. Baker*, 108 Md. 269, 70 Atl. 418.

(c) Under Code, art. 75, § 145 (which is applicable to the law courts of Baltimore City), relating to the entry of the appearance of defendants returned "summoned," it is the duty of the court in certain cases to enter the appearance of the defendant; and in the silence of the record, and in the absence of proof to the contrary, it will be presumed that the court has done its duty in that respect before the "rule plea" is laid and judgment by default entered.—*Horner v. O'Laughlin*, 29 Md. 465.

### § 915. Pleading.

#### *Cross-References.*

Questions presented for review, see ante, §§ 679-682.

Theory of trial and issues tried, see post, § 925.

Variance and admissibility of evidence under pleadings, see post, § 926.

Verdict on good counts only, see post, § 930.

### § 916.—In general.

(a) Where a demurrer was filed to a petition and does not appear to have been directly passed on, it will be deemed to have been overruled, where the case proceeded to trial on its merits.—*Pope v. Whitridge*, 110 Md. 468, 73 Atl. 281.

(b) In determining the propriety of an order granting an injunction, the court on appeal is confined to the averments of the bill, and the facts stated therein must be assumed to be true.—*Chesapeake Brewing Co. v. Mt. Vernon Brewing Co.*, 107 Md. 528, 68 Atl. 1046.

(c) Motion *ne recipiatur* to a plea in abatement having been sustained, it will be presumed, in the absence of anything in the record to the contrary, that the plea was offered too late.—*Spencer v. Patten*, 84 Md. 414, 35 Atl. 1097.

### § 917.—Demurrers.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 918.—Amendments.

#### *Cross-References.*

Amendments regarded as made below, see ante, § 889.

Serving amended pleading, see ante, § 916.

(a) Where, on appeal, there was nothing in the record as to the form of an application and leave granted thereon to amend the declaration, save a recital in the amended declaration that it was filed by leave of the court, it could not be regarded as having been filed in substitution of the original.—*Abbott v. Bowers*, 98 Md. 525, 57 Atl. 538.

(b) Where the record does not show whether a rule was laid on plaintiff to plead further when his proposed amended declaration was disallowed, or that any time was fixed within which he was to file a new pleading, the appellate court will assume that the lower court acted within its rules in entering a judgment of non pros.—*Thompson v. Young*, 90 Md. 72, 44 Atl. 1037.

### § 919.—Striking out or dismissal.

(a) Where the rulings of the court are not in the record, and there is nothing except the docket entries, which do not show why the court permitted the plaintiff to strike out the replication to a plea, or why it struck out the plea, the presumption is that the court ruled and decided correctly.—*Cattanzaro Di Giorgio Co. v. F. W. Stock & Sons*, 116 Md. 201, 81 Atl. 385.

(b) Where the record does not show the grounds of motions made to strike pleadings, it will be presumed on appeal that the rulings of the lower court on the motions were correct.—*Shartzler v. Mountain Lake Park Ass'n*, 86 Md. 335, 37 Atl. 786.

(c) Upon a record of the court below, setting out that the defendant's pleas of limitations were ordered to be stricken out because not filed "on or before the day fixed by the rules of the court," the Court of Appeals will presume that they were properly stricken out in the absence of evidence to the contrary, although the rules themselves were not included in the record.—*Kunkel v. Spooner*, 9 Md. 462, 66 Am. Dec. 332.



### § 920. Interlocutory orders and proceedings.

#### *Cross-References.*

Dismissal or nonsuit before trial, see post, § 927.

Questions presented for review, see ante, § 684.

Admissibility of depositions, see post, § 926.

(a) A deposition admitted in the court below will be presumed to have been taken in accordance with the rules of the court.—*Cherry v. Baker*, 17 Md. 75.

(b) A writ of mandamus was awarded to admit a party to a public office. On appeal the order was reversed, on the ground that the governor's certificate, then filed, did not show that the applicant had subscribed the oaths of office, and the appellate court sent the case back on a procedendo. A certificate afterwards "was filed" to supply this defect, as appeared of record in the court below, and then that court awarded the mandamus. *Held*, that, the record not disclosing by whom the certificate was filed, it would be presumed to have been filed by the appellant.—*Harwood v. Marshall*, 10 Md. 451.

### § 921. Right to trial by jury, and waiver thereof.

#### *Cross-Reference.*

Questions presented for review, see ante, § 685.

### § 922. Qualification and selection of jurors.

#### *Cross-Reference.*

Questions presented for review, see ante, § 686.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 923. Impaneling and oath of jurors.

(a) Where a docket entry showing the jury to have been sworn follows the entries in reference to an amendment by which an additional party was brought in, it will be presumed that the jury was resworn after the making of the amendment, assuming a reswearing to be necessary, because the first swearing need not be noted in the record.—*Thillman v. Neal*, 88 Md. 525, 42 Atl. 242.

### § 924. Reference.

#### *Cross-References.*

Questions presented for review, see ante, § 687.

Report and findings, see post, § 931.

### § 925. Conduct of trial or hearing, and rulings in general.

#### *Cross-References.*

Questions presented for review, see ante, § 688.

(a) Where the record shows evidence was offered after the case had been announced closed, and was rejected because of a rule of court, but the rule is not set forth, it will be presumed on appeal that such rule was correctly applied.—*Morrison v. Welty*, 18 Md. 169.

(b) Though the record does not show that any evidence was offered under a plea of limitations, it will be presumed that such evidence was offered if the jury pass on the question of limitations.—*Cross v. Hall*, 4 Md. 426.

(c) Where there are issues of fact, and several issues in law, and the county court renders a judgment generally upon the issues in law, it is to be presumed that they acted upon all of them, and they will be so reviewed upon appeal.—*Gardiner v. Miles*, 5 Gill 94.

(d) On appeal, the appellate court must presume that all questions necessarily raised by a prayer in the county court were brought to the attention of the latter tribunal.—*Bullitt v. Musgrave*, 3 Gill 31.

### § 926. Admissibility and reception of evidence.

#### *Cross-References.*

Questions presented for review, see ante, §§ 690-692.

Taking and suppression of depositions, see ante, § 920.

(a) In the absence from the record of deeds offered to prove the existence of a right of way, the ruling excluding them will be presumed to be correct.—*Frank Steil Brewing Co. v. Washington, B. & A. Electric R. Co.*, 120 Md. 419, 87 Atl. 838.

(b) Where the record does not show that evidence was admitted subject to exception, and it does not appear that the lower court passed upon such exception, the appellate court must therefore presume that the evidence was admitted without objection from the defendants.—*Forrester v. State*, 46 Md. 154.

(c) Where an exception taken to the ad-

missibility of certain evidence fails to show what action was taken relative thereto by the trial court, it will be presumed, on appeal, that the exception was overruled and the evidence admitted.—*Scarlett v. Academy of Music of Baltimore*, 46 Md. 132.

(d) Where the record shows a general objection to evidence was made and acted upon, the appellate court will presume that the trial court's action was based on the relevancy of the evidence to the issue made by the pleadings.—*Baltimore & O. R. Co. v. State*, 41 Md. 268.

(e) Where a statute requires due notice to be given, agreeably to the rule of the court in which the case is pending, in the absence of proof as to the rule, it must be assumed, where the court has admitted the evidence, that the notice was given in conformity with its rule.—*Matthews v. Dare*, 20 Md. 248.

(f) Where a deposition is not in the record, the appellate court will presume that the decision of the judge as to its admissibility was correct.—*McTavish v. Carroll*, 17 Md. 1.

(g) Where an offer of proof is made, and a bill of exceptions taken, and there is nothing else in the record to indicate bad faith, an appellate court must assume that the proof could have been made.—*Ricketts v. Pendleton*, 14 Md. 320.

#### § 927. Dismissal, nonsuit, demurrer to evidence, or direction of verdict.

##### *Cross-References.*

Questions presented for review, see ante, § 694.

Review of questions of fact, see post, § 997.

(a) The court on appeal from an order entered on a directed verdict for defendant must assume as true plaintiff's evidence.—*Frizzell v. Sullivan*, 117 Md. 388, 83 Atl. 651.

(b) In determining the propriety of directing a verdict for defendant, the Court of Appeals must view plaintiff's evidence in the light most favorable to him.—*Dettering v. Levy*, 114 Md. 273, 79 Atl. 476.

(c) In considering a prayer for a directed verdict, the appellate court must take the evidence of the adverse party as correct.—*Thillman v. City of Baltimore*, 111 Md. 131, 73 Atl. 722.

(d) In reviewing the refusal of the court to grant defendant's prayer in the nature of a demurrer to the evidence, the appellate court must assume that plaintiff's evidence, though contradicted, is true.—*United Rys. & Electric Co. of Baltimore v. Carneal*, 110 Md. 211, 72 Atl. 771.

(e) A judgment of non pros. for failure to plead in time will be presumed to be correct unless the contrary affirmatively appears.—*Marsh v. Johns*, 49 Md. 560.

(f) Where the evidence is not all in the record, its sufficiency cannot be reviewed.—*Smith v. Shaffer*, 46 Md. 573.

(g) The sufficiency of the evidence cannot be considered on appeal where the record does not affirmatively show that it contains all the evidence.—*Wolfe v. Hauver*, 1 Gill 84.

#### § 928. Instructions.

##### *Cross-References.*

Failure to ask or give instructions in general, see post, § 930.

Instructions understood or followed by jury, see post, § 930.

Necessity of submitting propositions of law or giving instructions on trial by court, see ante, § 846.

Questions presented for review, see ante, §§ 699-703.

(a) In the absence of error disclosed, the Court of Appeals will presume that the court properly disposed of the prayers.—*Jones v. State*, 118 Md. 67, 83 Atl. 1100.

(b) The court in passing on the refusal of requested instructions must assume the truth of the testimony of a witness warranting the instructions.—*Slagle v. Russell*, 114 Md. 418, 80 Atl. 164.

(c) In absence of evidence in the record to support an instruction not specially excepted to, it will be presumed that there was sufficient evidence to support it.—*Anne Arundel County Com'rs v. Carr*, 111 Md. 141, 73 Atl. 668.

(d) Where instructions for plaintiff were not excepted to, the giving of instructions that could only have been based on evidence contrary to that warranting plaintiff's instructions must be deemed properly refused on appeal.—*Bentley, Shriver & Co. v. Edwards*, 100 Md. 652, 60 Atl. 283.

(e) It will be presumed that there is evi-

dence to support an instruction given by the trial court.—*Joseph Bros. Co. v. Schonthal Iron & Steel Co.*, 99 Md. 382, 58 Atl. 205.

(f) Where, in an action against a master for an assault committed by his servant, there was no instruction requested by the defendants as to the sufficiency of the evidence to show that the servant was in the discharge of the duties for which he was employed when he made the alleged assault, and no exception was taken on that ground to the prayer of the plaintiff, it will be presumed, on appeal from a judgment in favor of plaintiff, that there was evidence authorizing the submission of the question to the jury.—*Boyer v. Coxen*, 92 Md. 366, 48 Atl. 161.

(g) Where the point does not appear to have been presented in the court below that there was no legally sufficient evidence from which a jury might find certain facts assumed in the instruction of the court below, the appellate court is bound by its rules to suppose and assume that there was evidence of these facts legally sufficient to justify instructing the jury about them, though there be no such evidence in the record.—*Livezy v. Miller*, 61 Md. 336.

(h) Where prayers contained in exceptions were rejected because they were not presented in time, the appellate court must presume that the lower court duly acted in accordance with its rules in requiring all the prayers to be offered together, and in rejecting those that were not offered in accordance with those rules.—*Sparrow v. Grove*, 31 Md. 214.

(i) The appellate court will presume that all questions necessarily raised by a prayer for an instruction were brought to the attention of the trial court.—*Bullitt v. Musgrave*, 3 Gill 31.

#### § 929. Custody and conduct of jury.

##### *Cross-Reference.*

Instructions understood or followed, see post, § 930.

#### § 930. Verdict.

##### *Cross-References.*

Amount of recovery, see post, § 932.

Facts or evidence not shown by record, see ante, §§ 907-909.

Questions presented for review, see ante, § 704.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 931. Findings of court or referee.

##### *Cross-References.*

Amount of recovery, see post, § 932.

Facts or evidence not shown by record, see ante, §§ 907-909.

Questions presented for review, see ante, § 704.

(a) A trial judge is presumed to have decided questions of fact correctly.—*Coulson v. City of Baltimore*, 109 Md. 271, 71 Atl. 990.

(b) A judgment by default extended by the lower court will be presumed to be based on the common counts, under which the court's action would be proper, where the declaration contains the common counts and also a special count for unliquidated damages, and the record is silent on the subject.—*Horner v. O'Laughlin*, 29 Md. 465.

#### § 932. Amount of recovery.

##### *Cross-References.*

Costs and attorneys' fees, see post, § 936.

Questions presented for review, see ante, §§ 705, 706.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 933. Order granting or refusing new trial.

##### *Cross-References.*

Questions presented for review, see ante, § 706.

Setting aside judgment, see post, § 935.

(a) Where the circuit court has authority under a rule set forth in the record to enter a default judgment, and such judgment was entered, the court on appeal will presume that the circuit court in entering the judgment acted in conformity with its other rules, if any, on that subject.—*Watson v. McHenry*, 107 Md. 245, 68 Atl. 606.

#### § 934. Judgment.

##### *Cross-References.*

Amendment or correction, see post, § 935.

Amount of recovery, see ante, § 932.

Facts or evidence not shown by record, see ante, §§ 907-909.

Questions presented for review, see ante, § 707.

Opening default, see post, § 935.

(a) Where the record shows that, on the

day on which a verdict was rendered, plaintiff filed a motion for a new trial, and reasons in support thereof, and that the motion was not disposed of for nearly three months thereafter, it will be assumed by the appellate court that an entry of final judgment in the docket the day the verdict was rendered was made by mistake of the clerk.—*Heiskell v. Rollins*, 81 Md. 397, 32 Atl. 249.

(b) On the issue as to whether a judgment was properly entered, it was shown that, upon return of the summons in the case, the defendants appeared by attorney, but filed no plea. *Held*, that it would be presumed that the judgment was entered by consent of their attorney.—*Wilson v. Ridgely*, 46 Md. 235.

(c) Where a county court, acting as a court of equity, passed an order to take a bill pro confesso, and to issue an ex parte commission to take testimony, and it was objected, on appeal, that this was done before the rule to answer had expired, an allegation being made that it appeared by the record that the order was passed in June, while the rule to answer was laid at the March term, and the cause then continued until the August term, so that no order could regularly have been passed until August, the appellate court *held* that neither the rules of the county court, nor the time of holding its intermediate equity terms, prescribed by law, appearing before them, they should presume, in the absence of proof to the contrary, that the certificate of the court below that the time to answer had elapsed was correct, and that the order was legitimately passed.—*Calwell v. Boyer*, 8 G. & J. 136.

### § 935. Orders and proceedings after judgment.

#### *Cross-References.*

Questions presented for review, see ante, § 708.

Default in general, see ante, § 934.

(a) Where there is nothing in the record to show when a return nulla bona was made, it will not be presumed that it was made subsequent to the time when the matters therein described and returned transpired.—*Hopkins v. State*, 53 Md. 502.

### § 936. Costs and allowances.

#### *Cross-Reference.*

Questions presented for review, see ante, § 709.

(a) The court, in reviewing the allowance of compensation to an attorney representing infants in a litigation involving their rights to a trust fund, must assume that members of the bar, giving a certificate fixing a reasonable fee, exercised a real and conscientious judgment.—*De Galard De Brassac v. Winans*, 115 Md. 139, 80 Atl. 730.

### § 937. Taking and perfecting appeal or other proceeding for review.

(a) Exceptions were filed to the award of referees by the defendants, which were overruled. Afterwards the defendants obtained a rule to show cause why said judgment should not be stricken out, or at least opened, and they be allowed to plead plene administravit. This rule the court discharged, from which judgment (as the record states) the defendants appealed; and the counsel for the appellants, under the rule of the appellate court, suggested a diminution. *Held*, that, as the suggestion contained all the necessary averments of the fact that an appeal was asked from the original judgment, the court would assume the truthfulness of the statement, and consider the appeal to be both from the original judgment and the refusal to strike it out.—*Johnston v. George*, 6 Md. 452.

(b) The court of chancery, in 1838, directed certain parties to an action to pay their proportion of certain annuities. The parties aggrieved by such decree lost their right of appeal by lapse of time, and in 1843 obtained an act of the Legislature, by which the appellate court was authorized and required to take cognizance of, and hear and determine, said cause, "in the manner and to the effect as if such transcript had been in due time transmitted." *Held*, that the court, being bound to presume that the order made in 1838 had been complied with, could not determine the case in the manner and to the effect as if the appeal had been taken in due time.—*Prout v. Berry*, 2 Gill 147.

(c) In the absence of a contrary showing in the record, the court will not presume

that the entry of appeal was on the same date as the date of the filing of the bill of exceptions.—*State v. Mackall*, 11 G. & J. 456.

(d) Where the record was silent as to the date of the entry of an appeal, and the fact is not admitted by the parties, the Court of Appeals will presume that the record was transmitted within the time prescribed by law.—*State v. Mackall*, 11 G. & J. 456.

**§ 938. Making and contents of bill of exceptions, case, or statement of facts.**

*Cross-Reference.*

Record on which motion for new trial was heard, see ante, § 933.

(a) Where the docket entries show that the case was submitted on agreed facts November 1st, and the bill of exceptions is dated October 22d of the same year, the court will assume that the date is a clerical misprision, and that the bills were signed when the judges had a right to sign them.—*Dement v. Tubman*, 29 Atl. 11. (Not reported in Maryland Reports.)

(b) On an appeal from the county court, where the record contains no evidence, the Court of Appeals will assume that sufficient proof had been offered at the trial to raise the question of law presented by the bill of exceptions; and where the question presented is sufficiently positive and specific to conform to act 1825, c. 117 (Code, art 5, § 9), the Court of Appeals will review the decision of the county court.—*Brice v. Randall*, 7 G. & J. 349.

(c) At the return term of a vendi. expo., a motion, sustained by proof, was made to set aside the sheriff's sale under it, which being overruled, the counsel for the motion excepted, and on the next day presented his bill of exceptions for the seal of the judges. The right to exceptions was contested, and the court adjourned without sealing the bill. At the next term, the court, after further inquiry as to the facts, sealed the exceptions, and filed it as of the preceding term. *Held*, that it was to be presumed that the delay was the result of some reasonable cause, and that the exception ought not to be expunged from the record.—*Nesbitt v. Dallam*, 7 G. & J. 494, 28 Am. Dec. 236.

**§ 939. Making and contents of transcript or abstract of record.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**(F) DISCRETION OF LOWER COURT.**

*Cross-References.*

Decisions reviewable, see ante, §§ 87-89.

Dismissal of appeal, see ante, § 788.

Review of discretion of intermediate courts, see post, § 1092.

Accounting of executor or administrator, see "Executors and Administrators," § 510.

Appointment of administrator, see "Executors and Administrators," § 20.

Appointment of administrator pendente lite, see "Executors and Administrators," § 22.

Criminal prosecutions, see "Criminal Law," §§ 1147-1156.

Discretion of orphans' court in refusing exoneration of trust estate, see "Trusts," § 267.

Election contests, see "Elections," § 305.

Highway proceedings, see "Highways," § 58.

In granting or refusing license, see "Intoxicating Liquors," § 75.

In quo warranto proceedings, see "Quo Warranto," § 62.

In suits for divorce, see "Divorce," § 184.

On appeal from allowance of alimony or suit money, see "Divorce," § 286.

Order of sale of assets of estate assigned for benefit of creditors, see "Assignments for Benefit of Creditors," § 250.

Orders for surrender of property in custody of state courts to trustee in bankruptcy, see "Bankruptcy," § 144.

Relief from stipulation, see "Stipulations," § 13.

Remission of part of amount of forfeited bond, see "Bail," § 94.

Removal of executor, see "Executors and Administrators," § 35.

Removal of guardian, see "Guardian and Ward," § 25.

**§ 940. Nature and extent of discretionary power.**

**§ 941.—In general.**

**§ 942.—Rules of court.**

**§ 943.—Imposition of terms.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 944. Power to review.**

**§ 945.—In general.**

(a) Where a lower tribunal is charged with duties as to which it is vested with discretion, in the absence of clear and satisfactory proof of a refusal, or such arbitrary conduct as amounts to a refusal, to exercise the discretion, its acts, within the limits of

the discretion, are not reviewable.—In re Watts' Estate, 108 Md. 696, 71 Atl. 316.

(b) While an appeal will not lie from an order or decree passed in the exercise of the discretion of the lower court, yet the question whether the subject-matter of the order or decree is within such discretion is open to examination upon an appeal in the suit in which the decree is passed.—Gottschalk v. Mercantile Trust & Deposit Co., 102 Md. 521, 62 Atl. 810.

**§ 946.—Abuse of discretion.**

**§ 947.—Refusal to exercise discretion.**

**§ 948. Burden of showing grounds for review.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 949. Allowance of remedy and matters of procedure in general.**

(a) Under act 1896, c. 229 (Code, art. 75, § 115), providing for the removal of cases from courts of law to equity "in the discretion of the judge presiding in the court in which the suit is pending," the court, on appeal, will not review the refusal of the presiding judge to remove a proceeding for a mandamus to a court of equity.—Summer-son v. Schilling, 94 Md. 591, 51 Atl. 612.

**§ 950. Provisional remedies.**

**§ 951.—In general.**

(a) An order of a court of equity, passed in the exercise of its jurisdiction in supervising the administration of a trust fund, selecting a depository for current cash funds, was discretionary in its nature, and not subject to appellate review.—Gottschalk v. Mercantile Trust & Deposit Co., 102 Md. 521, 62 Atl. 810.

**§ 952.—Arrest and bail.**

**§ 953.—Attachment and garnishment.**

**§ 954.—Injunction.**

*Cross-References.*

Burden of showing grounds for review, see ante, § 948.

Exercise of discretion in general, see "Injunction," § 135.

**§ 955.—Receiver.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 956. Extension of time, and proceedings out of time and nunc pro tunc.**

(a) The action of the court in granting extensions of time for signing a bill of exceptions will not be revised on appeal.—Carter v. Maryland & P. R. Co., 112 Md. 599, 77 Atl. 801.

(b) Under Baltimore City Code, § 312, providing that the court, for good cause shown, may extend time for filing pleas, granting leave to file is in the discretion of the court, and is not the subject of appeal.—Horner v. Plumley, 97 Md. 271, 54 Atl. 971.

**§ 957. Opening default.**

*Cross-References.*

Imposition of terms, see ante, § 948.

Vacating judgment or order in general, see post, § 982.

Extent and exercise of discretion as to opening judgment by default, see "Judgment," § 139.

**§ 958. Amendment in general.**

*Cross-References.*

Imposition of terms, see ante, § 948.

Proceedings out of time, see ante, § 956.

(a) In an attachment suit, the allowance of an amendment of a voucher by adding thereto the certificate of letters testamentary granted to plaintiff, being within the discretion of the trial court, is not subject to review on appeal.—Booth v. Callahan, 97 Md. 317, 55 Atl. 625.

**§ 959. Amended and supplemental pleadings.**

*Cross-References.*

Imposition of terms, see ante, § 948.

Proceedings out of time, see ante, § 956.

Refusal to exercise discretion, see ante, § 947.

Extent and exercise of discretion as to amendment of pleadings, see "Pleading," § 236.

(a) Prayer for leave to amend a petition, after demurrer to it has been sustained, being addressed to the discretion of the court, its action thereon cannot be reviewed by appeal.—Continental Trust Co. v. Baltimore Refrigerating & Heating Co., 120 Md. 450, 87 Atl. 947, 46 L. R. A. (N. S.) 887.

(b) The refusal to allow plaintiff to amend his declaration is reviewable, although no appeal lies from an order allowing an

amendment to be made.—*Sterling v. Marine Bank of Crisfield*, 120 Md. 396, 87 Atl. 697. (See Code, art. 75, § 35.)

(c) Allowance or refusal to allow amendment to a pleading cannot be reviewed on appeal.—*Warren v. Twilley*, 10 Md. 39; *Griffie v. Mann*, 62 Md. 248. (Cf. *Sterling v. Marine Bank of Crisfield*, 120 Md. 396, 87 Atl. 697.)

(d) An order allowing or refusing to allow the amendment of pleadings will not be disturbed on appeal, where it does not appear that the judge abused his discretion.—*Scarlett v. Academy of Music of Baltimore City*, 43 Md. 203.

(e) The acceptance or rejection of a supplemental plea is a matter of discretion of the court, and will not be reviewed.—*Frisby v. Parkhurst*, 29 Md. 58, 96 Am. Dec. 503.

(f) The action of an inferior court, in the exercise of its discretion to permit pleadings to be amended, may be reviewed by the appellate court.—*Warfield v. Warfield*, 5 H. & J. 459.

#### § 960. Rulings on motions relating to pleadings.

##### *Cross-References.*

Allowance of time for filing pleadings, see ante, § 956.

Burden of showing grounds for review, see ante, § 948.

#### § 961. Depositions, affidavits, or discovery.

#### § 962. Dismissal or nonsuit before trial.

##### *Cross-References.*

Burden of showing grounds for review, see ante, § 948.

Dismissal or nonsuit at trial, see post, § 973.

#### § 963. Proceedings preliminary to trial.

#### § 964.—In general.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 965.—Change of venue.

##### *Cross-Reference.*

Proceedings out of time, see ante, § 956.

(a) No appeal lies from an order rescinding a previous order for the removal of a cause, and designating a different court to which the record shall be sent, such order being passed within the term.—*Atlantic & G. C. Consol. Coal Co. v. Maryland Coal Co.*, 64 Md. 302, 1 Atl. 878.

#### § 966.—Continuance.

##### *Cross-Reference.*

Extent and exercise of discretion, see "Continuance."

(a) The action of the trial court on an application for a continuance will not be reviewed on appeal.—*Universal Life Ins. Co. v. Bachus*, 51 Md. 28.

#### § 967. Reference.

##### *Cross-Reference.*

Costs and allowances, see post, § 984.

#### § 968. Selection and impaneling of jurors.

##### *Cross-Reference.*

Extent and exercise of discretion, see "Jury," § 85.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 969. Conduct of trial or hearing in general.

(a) Upon appeal from an order of the Baltimore City Court sustaining an assessment imposed by the Appeal Tax Court, the appellate court will not review the refusal of a motion to require the counsel for the city to formulate and submit prayers outlining their standard of valuation of the easement in question in the case.—*Consol. Gas etc. Co. v. Mayor & City Council of Baltimore*, 105 Md. 43, 65 Atl. 628.

(b) Where a rule of court prohibits, unless by leave of court, the introduction of additional prayers for instructions, after instructions have been given based on those previously offered and argued, the refusal of the court to receive such additional prayers is an exercise of discretion which will not be reviewed on appeal. So, also, of the refusal of the court to entertain a petition praying to have the contents of such additional prayers ascertained, they having been lost.—*Lorentz v. Robinson*, 61 Md. 64.

(c) Where the trial court, by its rules, has a discretionary power, under certain specific circumstances, to refuse to entertain prayers offered by either party, its refusal under such circumstances to entertain a prayer is not the subject of review by the Court of Appeals.—*United States Tel. Co. v. Gildersleve*, 29 Md. 232.

(d) The judge presiding at a trial has a

discretionary power to prohibit the reading of decisions of the court to the jury, the exercise of which cannot properly be reviewed.—*Augusta Insurance & Banking Co. v. Abbott*, 12 Md. 348.

### § 970. Reception of evidence.

#### *Cross-Reference.*

Review of questions of fact preliminary to admission of evidence, see post, § 992.

(a) While evidence in rebuttal should be limited to such new points and questions as are first opened by defendant's evidence, the admission of evidence in rebuttal which should have been admitted in chief is not reviewable.—*Balto. C. & A. Ry. Co. v. Moon*, 118 Md. 380, 84 Atl. 536.

(b) Where the trial court admitted evidence of collateral facts, the court on appeal will not disturb the ruling in the absence of an abuse of discretion.—*Maryland Electric Rys. Co. v. Beasley*, 117 Md. 270, 83 Atl. 157.

(c) Refusal to strike out testimony admitted without objection is not reviewable.—*Pennsylvania R. Co. v. Orem Fruit & Produce Co. of Baltimore City*, 111 Md. 356, 73 Atl. 571.

(d) The question of diligence in search, so as to permit of secondary evidence, being in the discretion of the trial court, will not be reviewed on appeal, in the absence of abuse of such discretion.—*Robinson v. Singerly Pulp & Paper Co. of Cecil County*, 110 Md. 382, 72 Atl. 828.

(e) The determination on the question as to whether a photograph offered in evidence is sufficiently verified is not the subject of exception, unless the court exercised its discretion in an arbitrary manner.—*Consolidated Gas, Electric Light & Power Co. v. State*, 109 Md. 186, 72 Atl. 651.

(f) The reopening of a case to let in additional proof is wholly discretionary, and not subject to review.—*Ricketts v. Pendleton*, 14 Md. 320; *Schwartz v. Yearly*, 31 Md. 270; *Berry v. Derwart*, 55 Md. 66.

(g) The refusal of the trial court to ask a witness present in the court room if he had brought with him certain papers which he was required to produce under a subpoena duces tecum was in the discretion of the

court, and such refusal affords no ground for exception.—*Buschman v. Morling*, 30 Md. 384.

### § 971. Examination of witnesses.

#### *Cross-Reference.*

Extent and exercise of discretion, see "Witnesses," § 240, 267.

(a) In eliciting the testimony and directing the course of examination of uneducated witnesses unacquainted with our language, much must be left to the discretion of the presiding judge.—*Chesapeake Stevedoring Co. v. Hufnagel*, 120 Md. 53, 87 Atl. 4.

(b) The competency of a witness to testify as an expert is largely within the discretion of the court.—*Harris v. Consolidation Coal Co.*, 111 Md. 209, 73 Atl. 805.

(c) Rulings on questions on cross-examination, being within the court's discretion, will not be disturbed unless the court admits that in cross-examination which has no connection with the direct testimony.—*Consolidated Gas, Electric Light & Power Co. v. State*, 109 Md. 186, 72 Atl. 651.

(d) The passage of an order allowing a re-examination of a witness rests in the discretion of the court below, and its action in that respect is not a subject for review on appeal.—*Swartz v. Chickering*, 58 Md. 290.

### § 972. Arguments and conduct of counsel.

### § 973. Dismissal, nonsuit, demurrer to evidence, or direction of verdict.

#### *Cross-References.*

Dismissal or nonsuit before trial, see ante, § 962.

Review of questions of fact, see post, § 997.

### § 974. Submission of issues or questions to jury.

#### *Cross-Reference.*

Dismissal or nonsuit at trial, see ante, § 973.

### § 975. Custody and conduct of jury.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 976. New trial or rehearing.

#### *Cross-References.*

Appealability of orders, see ante, § 87.

Burden of showing grounds for review, see ante, § 943.

Imposition of terms, see ante, § 943.



Reasons for decision, see ante, § 854.

Refusal to exercise discretion, see ante, § 947.

Review of questions of fact on motion, see post, §§ 1005, 1015.

Setting aside or recommitting referee's report, see ante, § 967.

Extent and exercise of discretion on application for new trial, see "New Trial," § 6.

Extent and exercise of discretion on application for rehearing, see "Equity," § 392.

### § 977.— In general.

(a) The denial of a new trial will not be reviewed.—*Anderson v. State*, 5 H. & J. 174.

### § 978.— For errors or irregularities.

(a) The granting of a new trial on the ground that the special findings of the jury are inconsistent is a matter resting entirely in the sound discretion of the court, and is not reviewable on appeal.—*Waters v. Waters*, 26 Md. 53.

### § 979.— For insufficiency of evidence.

(a) A denial of a petition for rehearing in equity on questions of fact is not appealable.—*Dickey v. Pocomoke City Nat. Bank*, 89 Md. 280, 43 Atl. 33; *Second Nat. Bank v. Same*, Id.

(b) The refusal of the court below to set aside a verdict on the ground that it was against the weight of the evidence cannot be reviewed on appeal.—*Browne v. Browne*, 22 Md. 103; *Baltimore City Pass. Ry. Co. v. Sewell*, 35 Md. 238, 6 Am. Rep. 402.

### § 980.— For surprise, accident, inadvertence or mistake.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 981.— For newly discovered evidence.

(a) The appellate court will not review the discretion of the judge below in refusing a new trial for newly discovered evidence.—*Waring v. Turton*, 44 Md. 535.

### § 982. Vacating judgment or order.

#### *Cross-References.*

Opening default, see ante, § 957.

Vacating order of dismissal or nonsuit and reinstating cause, see ante, § 962.

### § 983. Proceedings after judgment.

#### *Cross-Reference.*

Refusal to exercise discretion see ante, § 947.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in

Decennial and Key Number Digests, and references therein to Century Digest.

### § 984. Costs and allowances.

#### *Cross-References.*

Fees of receivers, see ante, § 955.

Payment nunc pro tunc, see ante, § 956.

(a) Under circuit court rule fixing rates of commissions of trustees making sales under decree of the court, and then providing that the allowances are subject to be increased, depending on circumstances, at the discretion of the court, its action cannot be disturbed unless a clear abuse of discretion is shown; and, the circumstances not appearing, it must be assumed it acted properly.—*Taylor v. Denny*, 118 Md. 124, 84 Atl. 369.

(b) Under Code, art. 75, § 70, providing that the court, after a new trial has been ordered by the Court of Appeals, shall have power to stay all further proceedings in the action until the costs have been paid, the granting of a motion to stay proceedings being in the discretion of the court, it will not be reviewed in the absence of an abuse thereof.—*Brinsfield v. Howeth*, 110 Md. 520, 73 Atl. 289.

(c) The discretion of the trial court in refusing a stay of proceedings till payment of costs in a former action in which plaintiff took a nonsuit will not be reviewed on appeal, in the absence of abuse of such discretion.—*Brinsfield v. Howeth*, 107 Md. 278, 68 Atl. 566.

(d) The amount of attorney's fees allowed by the court in proceedings to enforce mechanics' liens will not be disturbed as excessive, it resting on the certificate of experienced counsel of high standing that from their knowledge of the services rendered such an amount would be a reasonable fee, and on the presumed discretion of the trial judge, and no evidence having been taken in opposition, though there was ample opportunity, and it being impossible to say that the allowance was so disproportionate to the services rendered as to indicate that the judge failed to exercise a sound and reasonable discretion.—*Title Guarantee & Trust Co. v. Burdette*, 104 Md. 666, 65 Atl. 341.

(e) A decree in equity will not be reversed on the ground of the allowance of costs,

that matter being particularly within the discretion of the courts of equity.—*Gebhart v. Merfeld*, 51 Md. 322.

(f) Costs in equity are in the sound discretion of the court, and its decision is not reviewable.—*Hamilton v. Schwehr*, 34 Md. 107.

**§ 985. Allowance and perfecting of appeal or other proceeding for review.**

*Cross-Reference.*

Extension of time and proceedings out of time, see ante, § 956.

(a) Where certain prayers for instructions have been mislaid, the appellate court will not review a decision of the trial court refusing to take steps to ascertain their contents, that they may be spread upon the record, since such decision is within the discretion of the trial court.—*Lorentz v. Robinson*, 61 Md. 64.

**§ 986. Allowance or supersedeas or stay.**

*Cross-Reference.*

Discretion of court in general, see ante, § 479.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**(G) QUESTIONS OF FACT, VERDICTS, AND FINDINGS.**

*Cross-References.*

Cases submitted below on agreed case or statement, see ante, § 845.

Retroactive operation of statute authorizing review of questions of fact, see ante, § 2.

Review of decision of intermediate courts, see post, §§ 1094, 1095.

Review of discretion of court in granting or refusing new trial on ground of insufficiency of evidence, see ante, § 979.

Review on writ of error, see ante, § 859.

Review where facts are not disputed, see ante, § 841.

Time for taking proceedings as affecting right of review, see ante, § 340.

What are questions of law or fact, see ante, § 842.

Accounting of executor or administrator, see "Executors and Administrators," § 510.

Appeals from justices' courts, see "Justices of the Peace," § 185.

Criminal prosecution, see "Criminal Law," § 1158-1160.

Election contests, see "Elections," § 305.

Highway proceedings, see "Highways," § 58.

In proceedings to establish boundaries, see "Boundaries," § 44.

In proceedings to establish claims against assignor, see "Assignments for Benefit of Creditors," § 307.

In suits for divorce, see "Divorce," § 184.

On appeal from allowance of alimony or suit money, see "Divorce," § 286.

On appeal from municipal courts, see "Courts," § 190.

On review in United States Supreme Court of decisions of state courts, see "Courts," § 399.

Probate proceedings, see "Wills," § 386.

Review of proceedings before referee in bankruptcy by judge, see "Bankruptcy," § 228.

Review of questions of fact as infringement of right to jury trial, see "Jury," § 37.

**§ 987. Power and duty to review.**

*Cross-Reference.*

Conclusiveness of findings of court, see post, § 1009.

(a) Where testimony is properly submitted to the jury on an issue, they are the exclusive judges of its weight.—*Stouffer v. Alford*, 114 Md. 110, 78 Atl. 387.

(b) The appellate court is not the judge of the weight of the evidence, but can only decide whether, assuming it to be true, it is sufficient to support the averments in the pleadings.—*Tolchester Beach Imp. Co. of Kent County v. Scharnagl*, 105 Md. 199, 65 Atl. 916.

(c) In equity cases the reviewing court may pass on questions of fact.—*Cooke v. Cooke*, 41 Md. 362.

**§ 988. Extent of review.**

**§ 989.— In general.**

(a) The Court of Appeals will not determine the weight of evidence, that being a jury question.—*Miller v. Leib*, 109 Md. 414, 72 Atl. 466.

(b) The Court of Appeals will not express any opinion upon the facts further than may be necessary to determine whether or not the evidence is legally sufficient, because, if the record be remanded, remarks upon the testimony might have weight with the jury, who alone are competent to pass upon the questions of fact.—*Wells v. Turner*, 16 Md. 133.

**§ 990.— In equitable actions.**

*Cross-References.*

See ante, § 987.

Conclusiveness of findings of court, see post, § 1009.

**§ 991. Questions involving issues of fact.**

*Cross-References.*

See ante, §§ 987, 989.

Motions and other interlocutory or special proceedings involving issues of fact, see post, § 1024.

What are questions of law or fact, see ante, § 842.

Construction of findings of court as of fact or of law, see "Trial," § 404.

**§ 992. Questions preliminary to admission of evidence.**

**§ 993. Number of witnesses.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 994. Credibility of witnesses.**

*Cross-Reference.*

See ante, § 987.

(a) Where the evidence is conflicting, the question as to which is to be given credence is for the jury in the trial court.—*Dolby v. Laramore*, 121 Md. 618, 89 Atl. 442.

(b) It is the province of the jury to pass on the credibility of witnesses, and its determination will not be disturbed on appeal.—*Morrison v. Whiteside*, 17 Md. 452, 79 Am. Dec. 661.

**§ 995. Probative force of evidence.**

**§ 996. Inferences from facts proved.**

*Cross-References.*

Discretion of court, see ante, § 973.

Presumptions, see ante, § 927.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 997. Dismissal, nonsuit, demurrer to evidence, or direction of verdict.**

(a) A ruling in a negligence action that there was no evidence sufficient to entitle plaintiff to recover will not be disturbed unless there was some evidence tending to show negligence.—*Havermale v. Houck*, 122 Md. 82, 89 Atl. 314.

(b) A judgment of non pros, for failure to plead in time will be presumed to be correct unless the contrary affirmatively appears.—*Marsh v. Johns*, 49 Md. 560.

**§ 998. Verdicts.**

**§ 999.— Conclusiveness in general.**

*Cross-References.*

Amount of recovery, see post, § 1004.

Approval of trial court, see post, § 1005.

Inferences from facts proved, see ante, § 996.

(a) Findings supported by evidence are conclusive on appeal.—*German Union Fire Ins. Co. of Baltimore v. Cohen*, 114 Md. 130, 78 Atl. 911.

(b) The appellate court cannot review the finding of a jury on matters of fact, but is limited to the inquiry whether there is sufficient evidence to warrant the submission of the case to the jury.—*Johnson v. Johnson*, 105 Md. 81, 65 Atl. 918.

(c) A verdict upon a question of fact on the evidence submitted is, in general, conclusive.—*Hopkins v. Adey*, 92 Md. 1, 48 Atl. 41, 50 L. R. A. 498.

**§ 1000.— Effect in equitable actions.**

*Cross-References.*

Approval of trial court, see post, § 1005.

Findings of court, see post, § 1009.

Power to review questions of fact in general, see ante, § 987.

**§ 1001.— Sufficiency of evidence in support.**

*Cross-References.*

Credibility of witnesses, see ante, § 994.

Review dependent on whether questions are of law or of fact, see ante, § 842.

Review of decision on motion for new trial, see post, § 1015.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 1002.— On conflicting evidence.**

*Cross-References.*

Amount of recovery, see post, § 1004.

Approval of trial court, see post, § 1005.

Review of decision on motion for new trial, see post, § 1015.

(a) The Court of Appeals is not concerned with contradictory testimony, for the weight and credibility of the testimony is solely for the jury.—*Maryland & P. R. Co. v. Knight*, 122 Md. 576, 89 Atl. 1091.

(b) Where the evidence is legally sufficient to meet the burden of proof, but is conflicting, the jury's findings are not reviewable on appeal.—*Thomas v. Cortland*, 121 Md. 670, 89 Atl. 414.

(c) The verdict of a jury on conflicting evidence will not be reversed on appeal.—*Winslow Elevator & Machine Co. v. Hoffman*, 107 Md. 621, 69 Atl. 394; *Rosenkovitz v. United Rys. & Electric Co. of Baltimore City*, 108 Md. 306, 70 Atl. 108.

(d) A verdict based on conflicting evidence will not be disturbed.—*Baltimore C. & A. Ry. Co. v. Twilley*, 106 Md. 445, 67 Atl. 265.

(e) A verdict on conflicting evidence or a judgment entered thereon will not be disturbed on appeal.—*Swindell Bros. v. J. L. Gilbert & Bro.*, 100 Md. 399, 60 Atl. 102.

### § 1003.—Against weight of evidence.

#### *Cross-References.*

Number of witnesses, see ante, § 993.  
Review dependent on whether questions are of law or of fact, see ante, § 842.  
Review of decision on motion for new trial, see post, § 1015.

(a) Where a verdict is contrary to the admissions of the parties, a new trial should be granted.—*Hughes v. Howard*, 3 H. & J. 9.

### § 1004.—Amount of recovery.

#### *Cross-References.*

Error as to amount as ground of reversal in general, see post, § 1171.  
Presumptions, see ante, § 932.  
Review of decision on motion for new trial, see post, § 1015.  
Successive verdicts, see post, § 1006.

#### *Annotation.*

Power of appellate court to interfere with verdict for excessive damages.—26 L. R. A. 384, note.  
Requiring remittitur in appellate court.—26 L. R. A. 385, note.

(a) On appeal the verdict is conclusive as to the amount of damages.—*Santa Clara Min. Ass'n v. Meredith*, 49 Md. 389, 33 Am. Rep. 264.

### § 1005.—Approval of trial court.

#### *Cross-References.*

Amount of recovery, see ante, § 1004.  
Review dependent on whether questions are of law or of fact, see ante, § 842.  
Review of decision on motion for new trial, in general, see post, § 1015.  
Review of discretion of lower court, see ante, § 979.  
Successive verdicts, see post, § 1006.

(a) In a case properly submitted to a jury under suitable instructions and approved by the trial court upon motion for a new trial, the verdict is conclusive as to the amount of recovery.—*Baltimore & O. R. Co. v. Wilson*, 117 Md. 198, 83 Atl. 248.

### § 1006.—Successive verdicts.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

### § 1007. Findings of court.

#### *Cross-References.*

Findings of referee, master, commissioner, or auditor, see post, §§ 1016-1022.  
In equitable actions, see post, § 1009.  
Inferences from facts proved, see ante, § 996.  
Refusal to find facts, see post, § 1023.  
What are findings of fact, see ante, § 842.  
In suits for divorce, see "Divorce," § 184.

### § 1008.—Conclusiveness in general.

(a) Where a case has been submitted to the court without a jury, the court on appeal will only review the decision on questions of law and will not examine the facts to ascertain whether the findings are correct or whether the facts found are sufficient to support the judgment.—*Turner v. Egan*, 116 Md. 35, 81 Atl. 877.

(b) Findings of fact by the trial court are conclusive on appeal.—*Whitridge v. City of Baltimore*, 103 Md. 412, 63 Atl. 808.

(c) Findings of fact by the court in a jury waived case are not subject to exception or review.—*Taylor v. Turley*, 33 Md. 500.

(d) Where a jury is waived, and the cause is tried by the court, its finding has the conclusiveness of a verdict.—*Sheppard v. Willis*, 28 Md. 631; *Cross v. Kent*, 32 Md. 584.

(e) The Court of Appeals will not examine the facts in evidence with a view to determine whether the finding of the court was correct; and in this respect an appeal will not be entertained, but if a question of law is raised, and it appears from the record, it must be examined and decided, and, in doing so, the Court of Appeals will look to the character of the facts only so far as may be necessary or proper to understand and apply the law in question.—*Thomas v. Hunter*, 29 Md. 406.

### § 1009.—Effect in equitable actions.

#### *Cross-References.*

Against verdict of jury, see post, § 1014.  
Effect of verdict of jury, see ante, § 1000.  
Power to review questions of fact in general, see ante, § 987.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 1010.—Sufficiency of evidence in support.

#### *Cross-References.*

Credibility of witnesses, see ante, § 994.

In equitable actions, see ante, § 1009.  
Review dependent on whether questions are of law or of fact, see ante, § 842.

(a) Where the greater part of the testimony is taken orally before the judge who decides the case, it is proper for the appellate court to consider that the trial judge had the opportunity to observe the witnesses and the manner of testifying, and had the best means of deciding upon the value of their testimony, although this should not prevent the appellate court from reversing the decree if it is not warranted by the evidence.—*Richter v. Poe*, 109 Md. 20, 71 Atl. 420.

(b) A finding or judgment by the court on the facts will not be disturbed if sustained by sufficient evidence, or substantially supported by the evidence.—*Thomas v. Brandt*, 26 Atl. 524. (Not reported in Maryland Reports.)

(c) A finding of fact by the court below will not be disturbed if there is any evidence fairly tending to support it.—*McCullough v. Biedler*, 66 Md. 283, 7 Atl. 454.

#### § 1011.—On conflicting evidence.

##### *Cross-Reference.*

In equitable actions, see ante, § 1009.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 1012.—Against weight of evidence.

##### *Cross-References.*

In equitable actions, see ante, § 1009.

Number of witnesses, see ante, § 993.

(a) A finding or judgment in equity will be set aside as against the weight of evidence only when the preponderance against it is great, and it clearly appears to be wrong.—*Barnett v. Nally*, 6 Atl. 535. (Not reported in Maryland Reports.)

#### § 1013.—Amount of recovery.

##### *Cross-References.*

Error as to amount as ground of reversal in general, see post, § 1171.

Presumptions, see ante, § 932.

(a) The appellate court, in reviewing the award to a wife suing for alimony without divorce, should not disturb the award, unless thoroughly satisfied that there has been error in the amount decreed to be paid.—*McCaddin v. McCaddin*, 116 Md. 567, 82 Atl. 554.

#### § 1014.—Against verdict of jury.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 1015.—Decision on motion for new trial.

##### *Cross-References.*

Approval of verdict, see ante, § 1005.

Review of discretion of lower court, see ante, § 979.

(a) The appellate court will not review the discretion of the judge below in refusing a new trial for newly discovered evidence.—*Waring v. Turton*, 44 Md. 535.

(b) The refusal of the court below to set aside a verdict on the ground that it was against the weight of the evidence cannot be reviewed on appeal.—*Browne v. Browne*, 22 Md. 103; *Baltimore City Pass. Ry. Co. v. Sewell*, 35 Md. 233, 6 Am. Rep. 402.

(c) The granting of a new trial on the ground that the special findings of the jury are inconsistent is a matter resting entirely in the sound discretion of the court, and is not reviewable on appeal.—*Waters v. Waters*, 26 Md. 53.

(d) The denial of a new trial will not be reviewed.—*Anderson v. State*, 5 H. & J. 174.

#### § 1016. Findings of referee, master, commissioner, or auditor.

##### *Cross-Reference.*

In suits for divorce, see "Divorce," § 184.

#### § 1017.—Conclusiveness in general.

##### *Cross-References.*

Effect of approval of trial court, see post, § 1022.

Effect of disapproval of trial court, see post, § 1022.

#### § 1018.—Sufficiency of evidence in support.

##### *Cross-References.*

Credibility of witnesses, see ante, § 994.

Effect of approval of trial court, see post, § 1022.

Probative force of evidence, see ante, § 995.

#### § 1019.—On conflicting evidence.

##### *Cross-Reference.*

Effect of approval by trial court, see post, § 1022.

#### § 1020.—Against weight of evidence.

##### *Cross-Reference.*

Effect of approval by trial court, see post, § 1022.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in

Decennial and Key Number Digests, and references therein to Century Digest.

### § 1021.— Amount of recovery.

(a) Where a nephew attempts, by fraud, to appropriate the property of an aged and mentally infirm aunt to his own use, and, on failure thereof, seeks to retain as much as possible under a claim for board and care, a finding of the auditor as to compensation due him will not be disturbed.—*Hamilton v. Doherty*, 83 Md. 648, 34 Atl. 1182.

(b) On a claim for compensation for services rendered as clerk to the executors of an estate, two of the executors gave testimony from which it might be fairly inferred that there was an agreement, express or implied, for a salary of \$100 a year. The clerk himself denied such contract, and the other executor testified that he himself told the clerk that he would be paid what his services were fairly and reasonably worth. The auditor found that the latter was the real agreement, and allowed compensation accordingly, and exceptions to his report were overruled by the court. *Held*, that this order should not be disturbed on appeal.—*Boyce v. Worley*, 81 Md. 197, 33 Atl. 889.

### § 1022.— Approval or disapproval of trial court.

#### Cross-References.

Approval of findings as to amount of recovery, see ante, § 1021.

Review dependent on whether questions are of law or of fact, see ante, § 842.

### § 1023. Refusal to find facts.

### § 1024. Questions of fact on motions or other interlocutory or special proceedings.

#### Cross-References.

Decision on motion for new trial, see ante, § 1015.

Dismissal, nonsuit, or direction of verdict, see ante, § 997.

Questions involving issues of fact in general, see ante, § 991.

Questions preliminary to admission of evidence, see ante, § 992.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### (H) HARMLESS ERROR.

#### Cross-References.

See "New Trial," §§ 27, 32, 41, 56, 64.

Application of statutes prohibiting reversal for immaterial errors, see post, §§ 1170, 1171.

Effect of errors below on trial de novo on appeal, see ante, § 895.

Errors affecting only co-party, see ante, § 880.

Reasons for decision, see ante, § 854.

Bastardy proceedings, see "Bastards," § 92.

Condemnation proceedings, see "Emineat Domain," § 262.

Criminal prosecutions, see "Criminal Law," §§ 1162-1177.

Election contests, see "Elections," § 305.

On appeals from justice's court, see "Justices of the Peace," § 183.

Probate and contest of wills, see "Wills," § 384.

Proceedings to establish boundaries, see "Boundaries," § 44.

Suits for divorce, see "Divorce," § 184.

### § 1025. Prejudice to rights of party as ground of review.

### § 1026.— In general.

(a) The court on appeal will only reverse for errors that are prejudicial to the rights of the complaining party.—*Carroll Springs Distilling Co. of Baltimore City v. Schnepfe*, 111 Md. 420, 74 Atl. 828.

(b) That a decree of sale was made on a bill to set aside a lunatic's conveyance, filed by the lunatic and his committee, and taken pro confesso, is no ground of objection by defendant, even if the decree was made upon insufficient allegations, as he is not injured thereby.—*Wampler v. Wolfinger*, 13 Md. 337.

### § 1027.— Errors not affecting result.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 1028.— Errors in cases of decisions correct on merits.

(a) Although the Court of Appeals may dissent from the opinion of the court below upon some of defendant's bills of exceptions, yet they will affirm the judgment, if they agree with that court in the opinion in the other bills of exceptions, and think the merits of the case are with plaintiff, and that there is proof properly received to entitle him to recover.—*Coale v. Harrington*, 7 H. & J. 147.

### § 1029.— Errors as affecting party not entitled to succeed in any event.

(a) A judgment for defendant should not be disturbed where plaintiff is not entitled

to recover in any event.—*Roloson v. Carson*, 8 Md. 208.

### § 1030.—Irregularities in procedure.

#### *Cross-References.*

On demurrer, see post, § 1040.

On motion to strike out pleading, see post, § 1042.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 1031. Presumption as to effect of error.

(a) Where exceptions were taken to the court's refusal to permit a witness to testify as to his method of reaching the value of land sought to be condemned, but the record, without reciting the witness' testimony, stated that he subsequently testified as to his means of arriving at the value of the property, the ruling will be presumed harmless on appeal.—*City of Baltimore v. Yost*, 121 Md. 366, 88 Atl. 342.

(b) In an action on an agreement to convey land, defendant pleaded performance, which was the only issue in the case. Plaintiff read the agreement, and offered parol testimony to remove an uncertainty in the description of the land. There was a verdict for the plaintiff, and damages were assessed in his favor. *Held*, that the admission of the parol testimony may have influenced the jury in assessing the damages.—*Taney v. Bachtell*, 9 Gill 205.

### § 1032. Burden to show prejudice from error.

#### *Cross-Reference.*

Burden of showing error in general, see ante, § 901.

(a) The burden is on appellant to show that the alleged error injured him.—*Midendorf v. Baltimore Refrigerating & Heating Co. of Baltimore City*, 117 Md. 17, 82 Atl. 1047.

(b) The giving of an erroneous instruction will not be cause for reversal where the evidence is not in the record, and there is nothing to show that the complaining party was harmed.—*Rose v. Buscher*, 80 Md. 225, 30 Atl. 637.

(c) A judgment will not be reversed for the admission of improper evidence, unless it is clearly shown to have been injurious

to the party objecting.—*McLaughlin v. Mencke*, 80 Md. 83, 30 Atl. 603.

(d) The burden is on appellant to show by the record that he was prejudiced by the erroneous ruling complained of.—*Ramsey v. Glass*, 9 Gill 56; *Bannon v. Warfield*, 42 Md. 22; *Grove v. Todd*, 45 Md. 252.

(e) A judgment will not be reversed for an erroneous refusal to pass judgment upon the legal sufficiency of the counts in the petition unless it appear by the record that appellant may have been injured thereby.—*Baltimore City Ry. Co. v. Wilkinson*, 30 Md. 224.

(f) The reviewing court cannot refuse to reverse a judgment on the ground that no injury has been done by instructions erroneously granted or rejected, unless the record clearly shows the absence of injury.—*Haney v. Marshall*, 9 Md. 194.

### § 1033. Errors favorable to party complaining.

#### *Cross-References.*

Error affecting adverse party as ground for reversal, see ante, § 877.

Rulings favorable to appellant's co-party as ground for reversal, see ante, § 877.

(a) A party cannot complain of modifications in instructions requested by him lessening the burden of proof placed on him in the instructions.—*Cushwa v. Burgess & Commissioners of Williamsport*, 117 Md. 306, 83 Atl. 389.

(b) Where a defendant, in an action for a balance due on a sale of certain goods, claimed the right to cross-examine on the taking of depositions by the plaintiff, and the court remanded the depositions taken for the purpose of allowing such cross-examination, the defendant was not prejudiced by the order of remand and an exception thereto cannot be sustained.—*Goodman v. Saperstein*, 115 Md. 678, 81 Atl. 695.

(c) One is not prejudiced by the giving of an instruction for the other party placing on such party a greater burden of proof than the law imposes.—*Jones v. Ortel*, 114 Md. 205, 78 Atl. 1030.

(d) One may not complain that his prayer is modified so as to be more favorable to him than he is entitled.—*Colonial Park*

*Estates v. Massart*, 112 Md. 648, 77 Atl. 275.

(e) Where, in a suit for assault and battery, the court denied the right to punitive damages by rejecting one of plaintiff's prayers and granted another authorizing consideration of defendant's condition in life and pecuniary circumstances, in estimating compensatory damages, defendant has no ground for reversal of the judgment for plaintiff because of such inconsistent rulings, as the error consisted in a denial of the right to punitive damages to which the plaintiff was entitled if the account of his witnesses be true.—*Stockham v. Malcolm*, 111 Md. 615, 74 Atl. 569.

(f) Where an omission in an instruction inures to the advantage of the party complaining, advantage cannot be taken of the same on appeal.—*State v. Baltimore & O. R. Co.*, 24 Md. 84, 87 Am. Dec. 600.

(g) Erroneous rulings upon instructions are harmless where the errors are in appellant's favor.—*Beck v. Thompson*, 4 H. & J. 531; *Chesapeake Ins. Co. v. Allegre*, 2 G. & J. 164; *Keener v. Harrod*, 2 Md. 63, 56 Am. Dec. 706; *Inloes v. American Exch. Bank*, 11 Md. 173, 69 Am. Dec. 190.

(h) Though a decree requires the payment of compound interest, the person bound thereby cannot complain of the error if its rectification would subject him to the payment of a still larger total amount.—*Eyler v. Hoover*, 8 Md. 1.

(i) An error in favor of appellant is no cause for a reversal at his instance.—*Emory v. Owings*, 3 Md. 178. [*Cited and annotated* in 84 L. R. A. 322, on conclusiveness of prior decisions on subsequent appeals]; *Smith v. Smith*, 7 Md. 55.

(j) The appellants cannot complain of error in a proviso added to a prayer which would operate for their benefit.—*Preston v. Leighton*, 6 Md. 88.

(k) Plaintiff cannot complain that the court, on a motion in arrest of judgment, set the verdict aside, and left him to proceed with a venire de novo, instead of dismissing the action, as should have been done.—*Keirle v. Shriver*, 11 G. & J. 405.

(l) No reversal can be had by parties for

erroneous exclusion of evidence offered by them, which would have been prejudicial to their claim.—*Farmers' Bank v. Planters' Bank*, 10 G. & J. 422.

### § 1034. Technical or formal errors.

*Cross-Reference.*

Errors ground for reversal, see post, § 1170.

### § 1035. Nature or form of remedy.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 1036. Parties.

*Cross-Reference.*

Application of statutes prohibiting reversal for immaterial errors, see post, § 1170.

(a) Where one is a proper party to a creditors' suit, being a creditor and interested in maintaining the priority of a judgment of another creditor, but is not made a party, and files a petition in the suit, notice of which is given all the other parties by subpoena, and testimony is taken, and all parties have opportunity to present their contentions, a nunc pro tunc order authorizing such person to intervene is harmless.—*Bradley v. Bond*, 101 Md. 691, 61 Atl. 504; *Same v. Jacobs*, Id.

(b) A corporation which purchases land while suit is pending to set aside a fraudulent conveyance thereof, and is made a party on its own request, is not prejudiced by joining with it as codefendant the heir of the deceased fraudulent vendee.—*Sinclair v. Auxiliary Realty Co.*, 99 Md. 223, 57 Atl. 664.

### § 1037. Process.

(a) Under Code, art. 16, § 148, allowing 15 days after return day for an appearance, error in a decree pro confesso, passed 51 days after the return day, in reciting that defendants were duly summoned and failed to appear, is harmless, where appearance was indorsed on the writ by defendants' attorney, who did nothing in the case.—*Harrison v. Morton*, 87 Md. 671, 40 Atl. 897.

### § 1038. Pleading.

*Cross-References.*

Burden to show prejudice from error, see ante, § 1032.

Errors favorable to party complaining, see ante, § 1033.



### § 1039.—In general.

(a) Where plaintiff joins issue without replying to additional pleas, defendant is not harmed by the absence of more formal pleadings, where none of such additional pleas present any material question that might not have been offered under the others.—*Chappell v. Real-Estate Pooling Co. of Baltimore City*, 89 Md. 258, 42 Atl. 936.

(b) Though the proper way to question the sufficiency of a plea was by demurrer for want of equity, yet, the plea being manifestly bad, disposing of the question by sustaining a motion *ne recipiatur* thereto is harmless.—*Spencer v. Patten*, 84 Md. 414, 35 Atl. 1097.

(c) In an action by the indorsee of a note before maturity, payable to the order of a company, against H. as an indorser, it appeared that the note was indorsed by M., treasurer, and by defendant. The narr. alleged that the note was indorsed by such company, and issue was joined by one of the pleas on such allegation. *Held*, that the issue as to the indorsement by the company was immaterial, and that, even if the proof showed that the indorsement varied from the allegation, the judgment for plaintiff would not be reversed, there being a proper issue in the case, and the jury being properly instructed on the law.—*Condon v. Pearce*, 43 Md. 83.

(d) Overruling a plea cannot be a fatal error, where all the facts provable under it were provable with the same effect under another plea on which the case went to trial.—*Kent v. Holliday*, 17 Md. 387.

(e) A declaration vicious on account of an averment obscurely made is not such a fatal objection as will justify the reversal of a judgment.—*Giles v. Perryman*, 1 H. & G. 164.

### § 1040.—Demurrers or exceptions.

#### *Cross-References.*

Error in admission of evidence under pleading erroneously ruled out, see post, § 1050.

Motion *ne recipiatur* instead of demurrer, see ante, § 1039.

Striking out when demurrer is proper remedy, see post, § 1042.

(a) Where the defendant was allowed to introduce, under the general issue, all evi-

dence which would have been admissible under a special plea, error in sustaining a demurrer to that plea was harmless.—*Cumberland Glass Mfg. Co. v. De Witt*, 120 Md. 381, 87 Atl. 927.

(b) An order sustaining all of the demurrers to a petition will not be reversed as regards certain of them, though they did not, as required by Code, art. 16, § 158, state the special grounds of demurrer; there having been no exceptions to them in the trial court, and the remaining demurrer, rightly sustained, having challenged the right of petitioner to the relief claimed.—*Continental Trust Co. v. Baltimore Refrigerating & Heating Co.*, 120 Md. 450, 87 Atl. 947, 46 L. R. A. (N. S.) 1069.

(c) Defendant was not prejudiced by erroneous overruling of a demurrer to a special count, where no evidence was admitted under that count that was not admissible under the other counts of the declaration.—*Bassett v. Ocean City*, 118 Md. 114, 84 Atl. 262.

(d) In an action on a note by an indorsee, it was harmless error to sustain a demurrer to a special plea setting up that the payee of the note did not indorse the note to the plaintiff, and that the signature thereon was not their signature, nor made by their authority; the matter set up being available under the general issue, also pleaded.—*Wilson v. Kelso*, 115 Md. 162, 80 Atl. 895.

(e) The overruling of a demurrer to a defective special plea, alleging fraud in procuring defendant's acceptance of the draft sued on, was harmless error; the defense being also available under the general issue, which was pleaded.—*Stouffer v. Alford*, 114 Md. 110, 78 Atl. 387.

(f) Defendant was not prejudiced by the sustaining of a demurrer to a special plea on the theory that it amounted to the general issue plea, where defendant was permitted under the general issue pleaded to offer in evidence all the facts pleaded in the special plea.—*British & Foreign Marine Ins. Co., Limited, of Liverpool v. Cummings*, 113 Md. 350, 76 Atl. 571.

(g) Any error in sustaining a demurrer to a plea or replication is harmless, where the full benefit of the defense or reply is got

under another plea or replication.—*Bakhaus v. Caledonian Ins. Co.*, 112 Md. 676, 77 Atl. 310.

(h) Defendant was not injured by the overruling of a demurrer to the declaration, so far as respects a certain claim for damages, where that matter was eliminated by a charge.—*Baltimore & O. R. Co. v. Dever*, 112 Md. 296, 75 Atl. 352.

(i) It is not reversible error to sustain a demurrer to a plea, where the party complaining had the benefit of the plea by issue joined on another plea.—*Ætna Indemnity Co. of Hartford, Conn. v. George A. Fuller Co.*, 111 Md. 321, 73 Atl. 738, 74 Atl. 369.

(j) Error in overruling a demurrer to a count in a declaration, or in refusing a motion to strike it out, is rendered harmless by an instruction that there was not sufficient evidence to entitle plaintiff to recover thereon.—*Fletcher v. Dixon*, 107 Md. 420, 68 Atl. 875.

(k) Under Code, art. 5, § 17, providing that no judgment shall be reversed if there be one good count in the declaration, the error in overruling a demurrer to the first count of a declaration, and in sustaining a demurrer to a plea to that count, is not ground for reversal, where the second count on which the judgment may have been rendered is good.—*Alvey v. Hartwig*, 106 Md. 254, 67 Atl. 132.

(l) Defendant was not injured by the sustaining of a demurrer to one of his pleas where another plea to which the demurrer was overruled set up the same defenses, and evidence was freely introduced at the trial in support thereof.—*Haines' Ex'rs v. Haines*, 104 Md. 208, 64 Atl. 1044.

(m) When the same question is presented by two paragraphs of a complaint, error in sustaining a demurrer to one of the paragraphs is harmless.—*Fisher v. Andrews*, 94 Md. 46, 50 Atl. 407.

(n) The sustaining of a demurrer to a paragraph of a plea or answer, if erroneous, is harmless error, where the facts alleged were admissible under a remaining paragraph or the general issue.—*Brooke v. Gregg*, 89 Md. 234, 43 Atl. 38; *Fisher v. Diehl*, 94 Md. 112, 50 Atl. 432.

(o) Defendant is not prejudiced by the sustaining of a demurrer to the plea or answer, if he has other pleas or answers under which he could introduce any evidence that would have been admissible under that demurred to.—*Lake Roland El. Ry. Co. v. Hibernian Soc.*, 83 Md. 420, 34 Atl. 1017.

(p) Sustaining a demurrer to a bill in equity after the demurrer has been withdrawn by amendment is harmless error where the bill is not sustainable in any event.—*Chappell v. Stewart*, 82 Md. 323, 33 Atl. 542.

(q) Though plaintiffs' demurrer to defendants' plea is erroneously overruled, if plaintiffs reply over and obtain a judgment for a part of their claim, and no evidence appears in the record to show that the judgment was not for the entire amount due plaintiffs, as there is no apparent injury to plaintiffs, they cannot obtain a reversal.—*State v. Banks*, 76 Md. X, unreported, 24 Atl. 540 (full report).

#### § 1041.— Amendments and supplemental pleadings.

(a) When matters averred in an amended answer might have been proved under the original answer, a refusal to allow the filing of the former is harmless error.—*Hopkins v. State*, 53 Md. 502.

#### § 1042.— Striking out or dismissing.

##### *Cross-References.*

Instructions to disregard counts, see post, § 1067.

Entertaining demurrer when motion to strike out is proper remedy, see ante, § 1040.

(a) A judgment will not be reversed for the refusal to strike out a plea of limitations if appellant could have gained nothing if the point had been decided in his favor.—*Cross v. Hall*, 4 Md. 426.

#### § 1043. Interlocutory proceedings.

##### *Cross-References.*

Burden to show prejudice from error, see ante, § 1032.

Reading depositions, see post, § 1047.

Refusal to allow witness to testify when deposition is read, see post, § 1047.

Rulings relating to production and inspection of books and documents, see post, § 1047.

(a) Refusal to require an injunction bond is harmless where the final decree perpetu-

ates the injunction.—*Wagner v. Shank*, 59 Md. 313.

(b) The fact that the bill was not filed until after the injunction was ordered is, at most, but a mere irregularity, which will not justify a reversal of the order granting it.—*Davis v. Reed*, 14 Md. 152.

(c) It seems that a judgment will be reversed on the ground of a discontinuance having taken place in the proceedings in the lower court.—*Beane v. Middleton*, 4 H. & McH. 74.

#### § 1044. Reference.

##### *Cross-References.*

Findings of referee, see post, § 1071.

Rulings on evidence, see post, §§ 1047, 1048, 1054.

#### § 1045. Selection and impaneling of jurors.

##### *Cross-Reference.*

Presumption as to effect of error, see ante, § 1031.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 1046. Conduct of trial or hearing in general.

##### *Cross-References.*

Burden to show prejudice from error, see ante, § 1032.

Immaterial errors as ground of reversal, see post, § 1170.

(a) In a suit for personal injury caused by a driven horse taking fright at an automobile, any error in the trial judge stating that the use of handholds on the driving reins did not indicate that the horse was wild, on refusing to permit defendant to show on cross-examination whether witness used handholds when he drove, was harmless.—*Fletcher v. Dixon*, 113 Md. 101, 77 Atl. 326.

#### § 1047. Rulings as to evidence in general.

##### *Cross-References.*

Burden to show prejudice from error, see ante, § 1032.

Errors favorable to party complaining, see ante, § 1033.

Immaterial errors as ground of reversal, see post, § 1170.

Evidence admitted without preliminary proof, see post, §§ 1050, 1051, 1052.

Discovery, see ante, § 1048.

(a) The evidence clearly showing to whom, and where, a note was delivered, refusal to

strike witness' reply to the question, what he did with it after he and the others executed it, that he presumed it was sent to plaintiff, was harmless.—*Union Trust Co. of New Jersey v. Knabe*, 122 Md. 584, 89 Atl. 1106; *Same v. Schlens*, Id.

(b) Error in rulings as to the admission of evidence is not ground for reversal, where appellant was not prejudiced thereby.—*Bregenzer v. Hutzler*, 121 Md. 384, 88 Atl. 231.

(c) Errors in rulings on evidence are not available to reverse a judgment for defendant, where upon all of the evidence plaintiff was not entitled to recover.—*Norris v. Connecticut Fire Ins. Co. of Hartford*, 115 Md. 174, 80 Atl. 960.

(d) Rulings in striking evidence became immaterial, where under all of the evidence a verdict was properly directed for appellee.—*Trustees of Seventh Baptist Church of Baltimore v. Andrew & Thomas*, 115 Md. 535, 81 Atl. 1.

(e) The refusal, in a contest of the election of corporate directors, to permit the ballots and proxies cast to be brought into court for inspection, was not prejudicial, where they were subsequently brought in.—*Pope v. Whitridge*, 110 Md. 468, 73 Atl. 281.

(f) In an action to recover the contract price of goods, compelling defendant to accept plaintiff's concession of the bare fact that the contract price was the full market price, and rejecting his evidence to establish that fact, which would have shown the contract price higher than the market price, was not reversible error; it not appearing that the ruling was prejudicial.—*Webster v. P. W. Moore & Son*, 108 Md. 572, 71 Atl. 466.

(g) Where evidence was ruled admissible, but was not laid before the jury, other evidence to the same effect being ruled on, the propriety of such ruling is immaterial, since no injury was done thereby.—*Leffler v. Alard*, 18 Md. 545.

#### § 1048. Rulings on questions to witnesses.

(a) In a passenger's action for wrongful ejection, error in the exclusion of a question asked on cross-examination of one of plaintiff's witnesses held not reversible er-

ror, where such evidence added nothing to what was admitted by plaintiff in his own testimony.—*Maryland & P. R. Co. v. Knight*, 122 Md. 576, 89 Atl. 1091.

(b) Complaint may not be made of the refusal to permit the asking of a question, it being elsewhere answered, without objection, by the same witness.—*Union Trust Co. of New Jersey v. Knabe*, 122 Md. 584, 89 Atl. 1106; *Same v. Schlens*, Id.

(c) Where no answer is given to a question, the propriety of the court's action in permitting it to be asked is not reviewable.—*Mertens v. Mueller*, 122 Md. 313, 89 Atl. 613.

(d) Omission of a fact from a hypothetical question held not prejudicial to defendants, in view of their subsequent proof of such fact.—*E. Beck & Co. v. Hanline Bros.*, 122 Md. 68, 89 Atl. 377.

(e) Improper questions asked an expert witness which he was unable to answer were not prejudicial.—*Baltimore & O. R. Co. v. Harris*, 121 Md. 254, 88 Atl. 282.

(f) In an action for malicious prosecution, the erroneous admission of a question whether the state's attorney gave witness any reason for issuing a warrant against plaintiff instead of another, who had hauled the stolen property to a station, was harmless where the witness answered in the negative.—*Mertens v. Mueller*, 119 Md. 525, 87 Atl. 501.

(g) In an action for negligence causing the running away of plaintiff's mules and his consequent injury, cross-examination of the driver of the defendant's wagon from which the bales of paper which caused the fright fell onto the public highway, as to his duty in regard to such bales, and his reply that he went after them if his employer sent him, would not prejudice the cause of the defendant and was harmless, though not touched on in chief.—*Cecil Paper Co. v. Nesbitt*, 117 Md. 59, 83 Atl. 254.

(h) In a suit on a mutual fire insurance policy, while it was permissible to ask plaintiff on cross-examination if he and his wife had not discussed the question of the payment of his premium interest on the policy before the adjuster came, since he had already testified on his examination in

chief, that it was the adjuster who first apprised him that his payment of premium interest was disputed; yet the refusal to admit such testimony was not prejudicial error, owing to his later testimony that he and his wife had not discussed that question before that time.—*Mutual Fire Ins. Co. of Montgomery County v. Ritter*, 113 Md. 163, 77 Atl. 388.

(i) Defendant may not complain of the overruling of objections to questions, they being of a preliminary character, and having no direct bearing on the issue in the case, and the answers being of such character as to do it no injury.—*Colonial Park Estates v. Massart*, 112 Md. 648, 77 Atl. 275.

(j) An exception to a question will not be noticed in detail, where the record does not show it was answered, and where it also appears the same question was afterwards put to the witness without objection and answered.—*Iron Clad Mfg. Co. v. Thomas B. Stanfield & Son*, 112 Md. 360, 76 Atl. 854.

(k) Any error in the court's stopping a witness in his answer to a question was not prejudicial, where the witness' testimony embracing the same matter was subsequently admitted.—*United Rys. & Electric Co. v. Corbin*, 109 Md. 442, 72 Atl. 606.

(l) In a personal injury case, allowing a medical witness to answer the question whether a young woman in plaintiff's condition was in a condition to marry was not prejudicial for failure of the question to state what condition was referred to, where the witness on cross-examination stated that he referred simply to the condition of plaintiff's nervous system.—*United Rys. & Electric Co. v. Corbin*, 109 Md. 442, 72 Atl. 606.

(m) Overruling objections to defective hypothetical questions is not reversible error where the answers do not tend to injure the objecting party.—*Miller v. Leib*, 109 Md. 414, 72 Atl. 466.

(n) If a question excepted to is not answered, the party excepting is not injured.—*Moneyweight Scale Co. v. McCormick*, 109 Md. 170, 72 Atl. 537.

(o) In an action by a real estate broker to recover from other brokers half the commissions received by them from the sale of

a lot, it was contended by defendants that the agreement with plaintiff did not relate to the lot sold. One of the defendants having testified that under the agreement the commissions were to be divided in case certain property was sold, which was not the lot sold, was asked, "Did that agreement extend to any other property?" which was objected to as leading. On the overruling of the objection, defendant answered, "Not that I know of." Thereafter defendant answered without objection that the only agreement was when the purchaser bought up the property, which was not the lot sold. *Held*, that, though the question asked defendant may have been leading, its allowance was not prejudicial error.—*Walker v. Baldwin & Frick*, 106 Md. 619, 68 Atl. 25.

(p) Where defendant was not permitted to ask plaintiff's witness a question by which he sought to impeach him, but defendant was subsequently examined, and did not deny the testimony, which he might have done, the ruling was not prejudicial to defendant.—*Deck v. Baltimore & O. R. Co.*, 100 Md. 168, 59 Atl. 650, 108 Am. St. Rep. 399; *Steiner v. Deck*, *Id.*

(q) In an action on a contract it appeared that the testimony of a witness for plaintiff had formerly been taken under a commission, and he was asked whether on that occasion he had not procured his stenographer to become a witness to corroborate him as to an interview which he then testified took place on a certain date, but as to which he admitted at trial that he was in error. *Held*, that, the witness having denied that he procured such corroboration, permitting the question to be asked was harmless, even if erroneous.—*Joseph Joseph Bros. Co. v. Schonthal Iron & Steel Co.*, 99 Md. 382, 58 Atl. 205.

(r) A refusal to allow a party's cross-examination by his own attorney after he has been called by the opposite party is not ground for reversal, where he afterwards again takes the stand—*Cahill v. Applegarth*, 98 Md. 493, 56 Atl. 794.

(s) In ejectment, where defendants set up adverse possession, a witness testified that he rented a portion of the lands from defendants' ancestor at an agreed rental,

moved on the lands, and remained there four years, paying rent therefor. He was then asked to state whether or not he remained in possession of the lands as tenant during the entire period, and answered, over plaintiff's objection, that he had. *Held*, that it was evidently intended simply to ascertain whether he continued to do what he had already spoken of during such period, and plaintiff was not prejudiced by the form of the question.—*Hackett v. Webster*, 97 Md. 404, 55 Atl. 480.

(t) Exclusion of a question to plaintiff, on cross-examination, as to whether a physician (a witness) had not, on the day of plaintiff's injury, advised him to sue, was not reversible error,—if intended to impeach the physician, no ground being laid; and, if to test the good faith or interest of the physician, plaintiff having answered in the negative before the question was excluded.—*Baltimore City Pass. Ry. Co. v. Baer*, 90 Md. 97, 44 Atl. 992.

(u) The erroneous refusal of the court below to compel a witness to answer a question will not affect the judgment of the appellate court, if the answer to the question would have been inadmissible or irrelevant.—*Naylor v. Semmes*, 4 G. & J. 273.

## § 1049. Admission of evidence.

### Cross-References.

- Burden to show prejudice from error, *see ante*, § 1032.
- Errors favorable to party complaining, *see ante*, § 1033.
- Immaterial errors as ground of reversal, *see post*, § 1170.
- Presumption as to effect of error, *see ante*, § 1031.

## § 1050.—Prejudicial effect in general.

### Cross-References.

- Defect supplied subsequently, *see post*, § 1052.
- Facts otherwise established, *see post*, § 1051.
- Laying foundation for impeachment of witness, *see ante*, § 1048.
- Preliminary evidence as to competency of witnesses, *see ante*, § 1048.

(a) It being immaterial as regards the matter in question, the validity of a guaranty, whether the note in suit was for a new loan or was a renewal, plaintiff was not prejudiced by evidence that it was a renewal.—*Union Trust Co. of New Jersey v.*

Knabe, 122 Md. 584, 89 Atl. 1106; Same v. Schlens, Id.

(aa) In an action against a landlord and tenant for injury to property on plaintiff's adjoining premises from the breaking of a water pipe on defendant's premises, the admission of a copy of a memorandum made by plaintiff and found correct on comparison with the original, which was then destroyed, was harmless, where the witness subsequently testified, without objection, to the exact amount of his loss.—Beck v. Hanline Bros., 122 Md. 68, 89 Atl. 377.

(b) The permitting of a witness to give an estimate of the number of tomatoes which had rotted in a field, if error, was not injurious where like estimates were given by other witnesses without objection.—Dolby v. Laramore, 121 Md. 618, 89 Atl. 442.

(bb) In an action for injuries resulting from fright caused by a loud whistle and escaping steam from a railroad engine, the erroneous admission of evidence that plaintiff's companion was stunned *held* not prejudicial.—Baltimore & O. R. Co. v. Harris, 121 Md. 254, 88 Atl. 282.

(c) In a contractor's action against a subcontractor for failure to perform work alleged to have been required by the contract, *held*, that error in allowing an admission by the contractor's superintendent upon a material question was prejudicial.—Noel Const. Co. v. Armored Concrete Const. Co., 120 Md. 237, 87 Atl. 1049.

(cc) Error, in an action against an executor for services rendered to testator, in admitting evidence by plaintiff as to services rendered testator and compensation received therefor, contrary to Code, art. 35, § 3, was reversible, though plaintiff gave other testimony to the same effect without objection.—Giering v. Sauer, 120 Md. 295, 87 Atl. 774.

(d) Error in the admission of the testimony of an uneducated witness unacquainted with the English language will not require a reversal unless injury clearly appears.—Chesapeake Stevedoring Co. v. Hufnagel, 120 Md. 53, 87 Atl. 4.

(dd) Error, in an action to recover one-half of the amount of two notes executed by plaintiff and defendant to aid a corporation

of which they were, respectively, president and treasurer, which notes plaintiff paid, in admitting a paper afterwards signed by defendant and others, but not by plaintiff, for the purpose of raising money for the company, upon which was indorsed a statement that it was "not carried out," was prejudicial.—Warfield v. Keyser, 119 Md. 158, 86 Atl. 152.

(e) Where plaintiff stated fully a conversation with defendant at a station house after her arrest, and defendant detailed the same conversation, error, if any, in admitting the testimony of a witness as to such conversation was not prejudicial.—Smith v. Brown, 119 Md. 236, 86 Atl. 609.

(ee) Where the buyer of coke wrote to the manufacturer admitting that he had a contract with the sellers for the purchase of that company's coke, and asking whether a contract between the manufacturer and seller contained a cancellation clause, the admission of letters written in reply, stating that there was no such clause, *held* harmless, where the buyer did not claim that the contract contained such clause.—Dimmick v. Hendley, 117 Md. 458, 84 Atl. 171.

(f) While the admission of immaterial evidence is unfortunate, as having a tendency to confuse the issues in the minds of the jury, it will not be ground for reversal where it is not apparent that any injury resulted therefrom, especially as much latitude must be allowed to the discretion of the trial court as to the materiality of the evidence sought to be elicited.—Doggett v. Tatham, 116 Md. 147, 81 Atl. 376.

(ff) Error in a passenger's action for being ejected, in permitting a witness to testify that, in his judgment plaintiff was under the influence of liquor on the train, after witness had stated that he did not know whether he could judge thereof, was harmless, where other witnesses testified that plaintiff was drinking and under the influence of liquor.—Maryland & P. R. Co. v. Tucker, 115 Md. 43, 80 Atl. 688.

(g) Where plaintiff, in an action against a bank for the balance of a deposit, offered the bank's published report, which was admitted and thereafter questioned the cashier, in an effort to show that the state-

ments in the report could not be correct, if defendant's position taken at the trial was correct, the admission of such questions gave the witness an opportunity to explain some of the statements, which explanation was likely to be helpful to the bank; and hence the admission of the testimony of the cashier was no injury to the bank.—*Marine Bank of Crisfield v. Stirling*, 115 Md. 90, 80 Atl. 736.

(gg) In an action against a decedent's estate to establish a claim for services for managing a bakery of decedent, evidence of why a license for a year was taken out in claimant's name, instead of in the name of decedent, his mother, was not prejudicial to the estate.—*Huff v. Simmers*, 114 Md. 548, 79 Atl. 1003.

(h) Where, in an action on a note given in payment of services by the payee in procuring options for the purchase of a majority of the stock of an insurance corporation, the defenses of fraud, duress, and want of consideration were not sustained, the error, if any, in allowing one of the defendants to testify as to what contract he obtained from the company, after securing control thereof, was not prejudicial.—*Dickson v. Fowler*, 114 Md. 344, 79 Atl. 519.

(hh) In a suit on a fire insurance policy, the error in admitting as evidence of the loss the preliminary proofs made by plaintiff was not harmless where the testimony at the trial showed a loss less than that stated in the proofs of loss, and the verdict was for the larger amount.—*Mutual Fire Ins. Co. of Montgomery County v. Ritter*, 113 Md. 163, 77 Atl. 388.

(i) Error in admitting evidence improper to determine the proper disposition of electric wires on a bridge, contact with one of which caused an injury sued for, was not error without injury.—*Annapolis Gas & Electric Light Co. v. Fredericks*, 112 Md. 449, 77 Atl. 53.

(ii) Where the testimony as to plaintiff's cattle transported by defendant having contracted Texas fever in its pens was not conclusive, the erroneous admission of evidence as to other cattle afterwards in such pens was not harmless.—*Baltimore & O. R. Co. v. Dever*, 112 Md. 296, 75 Atl. 352.

(j) In a suit by county commissioners against a railroad for the amount paid to satisfy a judgment for death caused by a defective highway, error in admitting an agreement between the commissioners and the railroad subsequent to the accident as to repairing it was harmless.—*Baltimore & O. R. Co. v. Howard County Com'rs*, 111 Md. 176, 73 Atl. 656.

(jj) In an action for being bitten by defendant's dog, defendant's expression of regret at the occurrence, admitted in evidence, was not prejudicial.—*Buck v. Brady*, 110 Md. 568, 73 Atl. 277.

(k) Error cannot be predicated on the admission of testimony, where the same evidence has been admitted without objection. *United Rys. & Electric Co. v. Corbin*, 109 Md. 442, 72 Atl. 606. [*Cited and annotated in 33 L. R. A. (N. S.) 104, on waiver of objection to testimony by cross-examination.*]

(kk) Where a witness had previously testified, without objection, that on the morning plaintiff's buildings were destroyed by fire, as on previous mornings, witness saw defendant's dinkey engines at work, and, just before they got to the buildings, open the exhaust and throw cinders 10 or 15 feet high, defendant was not prejudiced by the admission of evidence of other witnesses that they had seen the engines throw sparks when working near plaintiff's property shortly before the fire.—*Sims v. American Ice Co.*, 109 Md. 68, 71 Atl. 522.

(l) The error in admitting immaterial evidence not influencing the verdict is harmless.—*Moneyweight Scale Co. v. McCormick*, 109 Md. 170, 72 Atl. 537.

(ll) In an action against a cold-storage warehouseman for damages to dressed poultry, because of the failure to maintain drain pipes, and because of the failure to make the freezers water-tight, the error in admitting evidence that plaintiff had previously placed poultry in storage there with good results was not prejudicial.—*Baltimore Refrigerating & Heating Co. v. Kreiner*, 109 Md. 361, 71 Atl. 1066.

(m) Where, in an action for death, the uncontradicted proof showed that decedent was about 28 years old, and in perfect health, earning \$65 a month, and the jury

awarded \$4,800, giving the widow \$2,800, and the child, born after decedent's death, \$2,500, error in permitting the widow to testify that she had no property was not prejudicial.—*Consolidated Gas, Electric Light & Power Co. v. State*, 109 Md. 186, 72 Atl. 651.

(n) The admission of evidence which could not injure the party appealing is, at most, harmless error.—*Bernheimer Bros. v. Bager*, 108 Md. 551, 70 Atl. 91.

(o) In an action against a brewing company for breach of a guaranty of the delivery of malt under a contract assigned to plaintiff by the company, plaintiff having asked the company's bookkeeper why he dictated the guaranty, any error in permitting an answer could not have prejudiced defendant.—*Mount Vernon Brewing Co. v. Teschner*, 108 Md. 158, 69 Atl. 702.

(p) The admission of incompetent testimony to contradict other incompetent testimony is harmless.—*Black v. First Nat. Bank*, 96 Md. 399, 54 Atl. 88; *Dryden v. Barnes*, 101 Md. 346, 61 Atl. 342; *Whitridge v. City of Baltimore*, 103 Md. 412, 63 Atl. 808.

(q) The error in admitting in evidence a ledger as substantive evidence of the facts indicated by the entries therein, without laying a proper foundation therefor, was reversible error, where the party offering the same in evidence claimed that the entries afforded inferences going to the vital questions in the case, and the adverse party questioned the accuracy of the entries, and explained that he was without means of contradiction, because of the destruction of his memoranda relating to the transactions.—*Hoogewerff v. Flack*, 101 Md. 371, 61 Atl. 184.

(r) The admission of evidence which is merely immaterial, and not prejudicial, is not reversible error.—*Lewis v. Tapman*, 90 Md. 294, 45 Atl. 459, 47 L. R. A. 385; *Gambrell v. Schooley*, 95 Md. 260, 52 Atl. 500, 63 L. R. A. 427; *James Clark Distilling Company v. City of Cumberland*, 95 Md. 468, 52 Atl. 661; *Downs v. Miller*, 95 Md. 602, 53 Atl. 445; *City of Baltimore v. Walker*, 98 Md. 637, 57 Atl. 4; *Bowman v. Little*, 101 Md. 273, 61 Atl. 223, 657, 1084.

(s) Error in the admission of evidence is not ground for reversal if not prejudicial to the rights of the complaining party.—*Supreme Conclave, Improved Order of Heptasophs v. Miles*, 92 Md. 613, 48 Atl. 845, 84 Am. St. Rep. 528; *Wheeler v. Harrison*, 94 Md. 147, 50 Atl. 523; *Martin v. Moore*, 99 Md. 41, 57 Atl. 671; *Cahill v. Applegarth*, 98 Md. 493, 56 Atl. 794.

(t) In an action for slander in saying that it is better to buy Western beef than to buy beef from a slaughter house where condemned and diseased cattle are slaughtered, the admission of evidence that proper precautions for destroying diseased animals were taken at plaintiff's slaughter house was not reversible error.—*Blumhardt v. Rohr*, 70 Md. 328, 17 Atl. 266.

(u) In an action for slander in saying that plaintiff was accustomed at his slaughter house to kill diseased cattle, the admission of an expert as to the construction of the building and the condition of the premises was not reversible error.—*Blumhardt v. Rohr*, 70 Md. 328, 17 Atl. 266.

(v) Error in admitting testimony is harmless unless it appears to have been prejudicial to the party complaining.—*Anderson v. Garrett*, 9 Gill 131; *Emory v. Owings*, 3 Md. 178; *Hanson v. Campbell*, 20 Md. 223; *Hayes v. Wells*, 34 Md. 512; *Reier v. Strauss*, 54 Md. 291, 39 Am. Rep. 390.

(w) In an action against a sheriff for assault and false imprisonment, it appeared that plaintiff was arrested, and confined in the city jail; that he was afterwards transferred to the county authorities, and by the sheriff imprisoned in the county jail. *Held*, that evidence that the sheriff acted under the advice of the county attorney, while wholly unnecessary, was not detrimental to plaintiff, and therefore its admission was harmless.—*Blake v. Burke*, 42 Md. 45.

(x) The admission of irrelevant evidence is no ground for reversing a judgment where it could not have influenced the determination.—*Clements v. Smith*, 9 Gill 156.

(y) Where plaintiff, in an action to recover a deposit of money as a wager on an election contest, erroneously deemed it necessary to give notice to defendant not to part with the deposit, the admission of im-



proper evidence as to such notice is harmless error.—*Doyle v. Baltimore County Com'rs*, 12 G. & J. 484.

(z) The admission of improper evidence is harmless where it is immaterial to the issue involved and injury is not shown.—*Maryland & P. Ins. Co. v. Bathurst*, 5 G. & J. 159.

#### § 1051.—Facts otherwise established.

##### *Cross-Reference.*

Defect supplied subsequently, see post, § 1052.

(a) Plaintiff could not be injured by the admission of witness' belief that every loan by plaintiff had to be approved by its executive committee, its by-laws, and the testimony of its president as to the limit of his authority being in evidence.—*Union Trust Co. of New Jersey v. Knabe*, 122 Md. 584, 89 Atl. 1106; *Same v. Schlens*, Id.

(b) Where, in an action for injuries to a traveler struck by an electric car, the motorman testifying for the company proved the distance in which he could stop a car under the conditions existing at the time of the accident, the error in permitting a witness, not competent, to express his opinion on the subject, which conformed to the testimony of the motorman, was not prejudicial.—*Capital Traction Co. v. Contner*, 120 Md. 98, 87 Atl. 904.

(c) Where, after a default judgment against defendant, plaintiff offered evidence that he did not know defendant's proper name, but that she was the party he intended to sue, and that he had sued her before by another name, but that the case had been nonprossed, the admission of this evidence was harmless, if erroneous, because the liability of defendant was established by the judgment.—*Betz v. P. Welty & Co.*, 116 Md. 190, 81 Atl. 382.

(d) Where a witness has testified as to a fact which the objecting party has himself admitted, it is immaterial whether the testimony be admitted or not; and, if admitted, any error therein is harmless.—*Abramson v. Horner*, 115 Md. 232, 80 Atl. 907.

(e) Error in the admission of evidence as to facts admitted, presumed, or otherwise shown, is harmless.—*Rock Creek Steamboat Co. v. Boyd*, 111 Md. 189, 73 Atl. 662.

(f) Error in permitting a record book kept by a witness and used by him to refresh his recollection to go to the jury as evidence was harmless, where the witness testified to the facts of his own knowledge independent of the record after refreshing his memory therefrom.—*Philadelphia, B. & W. R. Co. v. Diffendal*, 109 Md. 494, 72 Atl. 193; rehearing denied 109 Md. 494, 72 Atl. 458.

(g) The admission of the testimony of an employe of defendant as to the contents of a letter sent through him to an illiterate person, to whom he read it, is not reversible error, where the contents were communicated to that person only through the reading, and it amounted simply to a repetition of another letter written to defendant which was already in evidence.—*Murphy & Hutt v. American Can Co.*, 106 Md. 190, 67 Atl. 17.

(h) The admission of improper evidence of a fact in issue, is harmless when the verdict or judgment is supported by sufficient competent evidence.—*Rippelmeyer v. P. Hanson Hiss Mfg. Co.*, 90 Md. 386, 45 Atl. 529; *Black v. First Nat. Bank*, 96 Md. 399, 54 Atl. 88; *Finch v. Mishler*, 100 Md. 458, 59 Atl. 1009.

(i) Where the other evidence is sufficient to determine the issue the admission of incompetent opinion evidence is harmless error.—*Baltimore Belt R. Co. v. Sattler*, 100 Md. 306, 59 Atl. 654.

(j) The admission of incompetent evidence bearing exclusively on a fact that is undisputed is harmless.—*Supreme Conclave, Improved Order of Heptasophs of Baltimore City v. Miles*, 92 Md. 613, 48 Atl. 845, 84 Am. St. Rep. 528.

(k) Where a witness states a particular thing on his examination in chief, which was contradicted, it is not a ground for reversal that he asserted it when testifying in rebuttal.—*Baltimore & Y. Turnpike Road v. Parks*, 74 Md. 282, 22 Atl. 399.

(l) The admission of improper evidence is harmless where the fact thereby sought to be shown is otherwise fully and properly established.—*Coale v. Harrington*, 7 H. & J. 147; *Clarke v. State*, 8 G. & J. 111; *Oelrichs v. Artz*, 21 Md. 524; *Turnbull v. Mad-dux*, 68 Md. 579, 13 Atl. 334.

(m) In ejectment, where the lessor of plaintiff claimed title as trustee in insolvency of defendant, who relied on an outstanding title in a third party by a prior deed from himself, said third party having given a bond to reconvey to defendant at the same time, parol evidence was offered of an agreement between defendant and said third party by which the latter agreed to purchase the land, and pay a certain judgment and other debts of defendant, and that he paid the balance of the purchase money, and that defendant agreed to rent said land of said grantee, and that he paid one year's rent. *Held*, that the admission of such evidence worked no injury to plaintiff, as it tended to qualify the absolute character of the deed referred to.—*Water v. Riffin*, 19 Md. 536.

(n) The admission of improper evidence is harmless where the fact sought to be shown thereby is admitted by the pleadings.—*Hardey v. Coe*, 5 Gill 189.

**§ 1052.—Defect supplied or objection removed subsequently.**

*Cross-Reference.*

Order of proof, see ante, § 1047.

(a) That physicians testified that insured's death was aided or caused by his raising himself upon his elbows before he died, when it had not been proved that he had so raised himself, was not reversible error, where that fact was afterwards established, and the physicians stated when testifying that it had been communicated to them.—*Standard Accident & Life Ins. Co. v. Wood*, 116 Md. 575, 82 Atl. 702.

(b) Error in excluding subsequently admitted testimony is harmless.—*Deland Min. & Mill. Co. v. Hanna*, 112 Md. 528, 76 Atl. 850.

(c) Though it was subsequently, and by other means, proved that B. had arrested other people and placed them in the lockup, defendant had a right to stand on his exception to the admission of the testimony of M. that B. had made other arrests during his employment by defendant and prior to his arrest of plaintiff, which had no tendency to prove the fact, sought to be established thereby, that B. was acting within the scope of his duties when he arrested plaintiff;

this not falling within the rule that there will be no reversal, because clearly there was no injury, where competent evidence, after being excluded, was admitted.—*Philadelphia, B. & W. R. Co. v. Green*, 110 Md. 32, 71 Atl. 986.

(d) Where a locomotive engineer, who had had no training as a mechanical engineer in the construction of locomotives, was asked to describe the type of a locomotive, his answer, "I cannot exactly tell what type she was; the only thing I can tell you is that she was old and worn out when they (the railroad company) got her," was not prejudicial to defendant, where an employee of defendant testified without objection that the engine was old, of about the type used on a certain railroad many years ago.—*Maryland, D. & V. Ry. Co. v. Brown*, 109 Md. 304, 71 Atl. 1005.

(e) Where evidence that plaintiff was not able to do as much work after his imprisonment as before and could not sleep was improperly admitted because the narr. did not allege special damages, but the evidence was not followed up by evidence showing that his inability to work, etc., was due to confinement, and the verdict on proper instructions as to damages indicated that the jury did not consider such evidence, the error was harmless.—*Moneyweight Scale Co. v. McCormick*, 109 Md. 170, 72 Atl. 537.

(f) The error in permitting a witness, putting himself in the position occupied by a lineman killed while on a pole by coming in contact with a live wire, to testify that, as he was two inches shorter than decedent, his eyes were two inches below some heavy gauge wires, which he judged obscured his vision, and he could not see the bare places on the wire, was cured by his testimony that the effect of the gauge wires was to obscure the bare places because they were directly between the man and the wire.—*Consolidated Gas, Electric Light & Power Co. v. State*, 109 Md. 186, 72 Atl. 651.

(g) Error in the admission of evidence for plaintiff was harmless, where the defendant, on cross-examination, elicited evidence to the same effect.—*Stewart & Co. v. Harman*, 108 Md. 446, 70 Atl. 333.

(h) Any error in refusing to strike testi-

mony respecting letters because they were not produced was harmless where they were subsequently produced.—*Mount Vernon Brewing Co. v. Teschner*, 108 Md. 158, 69 Atl. 702.

(i) In an action by a servant against his master for injuries caused by a fellow servant starting an engine which lifted a heavy bucket upon which plaintiff was working, a witness testified, with reference to a conversation between the master's superintendent and its general manager in reference to the fellow servant's capacity as an engineer, that he did not hear the conversation, but that the general manager said: "Bring him down from there." *Held*, that, though the testimony was calculated to mislead the jury by suggesting that the fellow servant was removed from the engine because of his incompetency, the error was cured by the superintendent's testimony that there was nothing in the conversation about the fellow servant's incompetency, and that he was brought down from the engine to assist in work in which the other servants were engaged at the time.—*McCall's Ferry Power Co. v. Price*, 108 Md. 96, 69 Atl. 832.

(j) In an action against a street railway company for personal injuries received in an alleged collision with a car, error in admitting statements of one apparently the conductor of the car was harmless, where the evidence showed that the wagon was found broken to pieces on the tracks, and the horse and contents of the wagon were taken charge of by defendant and returned to plaintiff's son, receipts being taken for them stating that they were taken charge of after a collision.—*United Rys. & Electric Co. of Baltimore City v. Cloman*, 107 Md. 681, 69 Atl. 379.

(k) The admission of improper evidence is harmless if the facts were afterwards established by proper evidence.—*Baltimore & O. R. Co. v. Cain*, 81 Md. 87, 31 Atl. 801, 28 L. R. A. 688.

(l) In an action against a railroad company for the death of plaintiffs' decedent, alleged to have been caused by defendant's negligence, a witness for plaintiffs testified as to certain declarations of an employee of

defendant, which evidence was not responsive to the question asked. Another witness for plaintiffs testified concerning declarations made by the employee. *Held*, that the error in receiving this evidence was not cured by the facts that the employee was also called as a witness, and that the jury had the benefit of his denial of such declarations.—*Baltimore & O. R. Co. v. State*, 75 Md. 526, 24 Atl. 14.

(m) The erroneous admission of evidence, which is at the time inadmissible, is cured by the subsequent introduction of evidence which renders it admissible.—*Wyeth v. Walzl*, 43 Md. 426; *Roberts v. Woven Wire-Mattress Co.*, 46 Md. 374.

(n) Where a document becomes admissible after the introduction of certain preliminary proof, and that proof is submitted to the jury, the appellant will not be held to be injured by the admission of the paper before the preliminary proof was admitted, and the judgment will not be reversed upon that ground.—*Hays v. State*, 40 Md. 633.

(o) Erroneously admitted evidence is not ground for reversal, where, had the evidence been excluded, appellee would have recovered under parol evidence which would then have become admissible.—*Chew v. Beall*, 13 Md. 348.

#### § 1053.—Error cured by withdrawal, striking out, or instructions to jury.

(a) Where, in an action against a member of a firm for the malicious prosecution of an employee for larceny, the court charged that the fact that the warrant was sworn out by an employee of the firm would not render defendant liable, the admission of evidence that the warrant was so sworn out was not prejudicial.—*Mertens v. Mueller*, 122 Md. 313, 89 Atl. 618.

(b) The insurance company is not prejudiced by the admission in evidence, in an action on a fire policy, of the proof of loss, where the court instructed that the statements contained therein could not be considered as evidence "of the fact or extent of plaintiff's loss."—*Citizens' Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 116 Md. 422, 82 Atl. 372.

(c) Where, in an action on a fire insurance policy, the insured withdrew from the jury all claim of damages for a sewing machine injured by the fire, any error in the admission of evidence as to the ownership was harmless.—*German Union Fire Ins. Co. of Baltimore v. Cohen*, 114 Md. 130, 78 Atl. 911.

(d) In an action for damages for a temporary private nuisance, the admission of evidence as to the value of the property before and after the injury complained of, though erroneous, was not prejudicial, where the court subsequently charged that there could be no recovery for permanent injury or for diminution in the value of plaintiff's property.—*Carroll Springs Distilling Co. of Baltimore City v. Schnepfe*, 111 Md. 420, 74 Atl. 828.

(e) In an action for being bitten by defendant's dog, no injury was done by the admission of testimony that he afterward said he thought the dog had hydrophobia, the court having properly instructed that he was only responsible, if at all, for the want of caution in setting the dog free in disregard of warning.—*Buck v. Brady*, 110 Md. 568, 73 Atl. 277.

(f) An exception to an answer is disposed of by subsequently granting a motion to strike it out.—*Buck v. Brady*, 110 Md. 568, 73 Atl. 277.

(g) Where, in an action for injuries, the jury were properly instructed as to the measure of damages, error in permitting evidence that plaintiff was married after the accident was not ground for reversal.—*United Railways & Electric Co. v. Riley*, 109 Md. 327, 71 Atl. 970.

(h) In an action by an architect for commissions on extra work done under a contract which limited his commissions to 10 per cent., the admission of evidence as to what was usually paid for extra work, though irrelevant, is harmless, where the jury were instructed to limit the commissions to 10 per cent., and the verdict was only for that amount.—*Harrison v. McLaughlin Bros.*, 108 Md. 661, 70 Atl. 424.

(i) The admission of improper evidence affords no ground for reversal where the jury is afterwards directed not to consider

it, and it does not appear that their verdict was thereby influenced.—*Consolidation Coal Co. v. Shannon*, 34 Md. 144.

(j) The admission of improper evidence is harmless where the jury was instructed that there is no evidence sufficient to prove the proposition on which the evidence was offered.—*Beatty v. Mason*, 30 Md. 409.

#### § 1054.— On trial without a jury.

##### *Cross-References.*

Effect on trial de novo on appeal, see ante, § 895.

Presumption that only competent evidence was considered, see ante, § 931.

(a) On a trial by the court the reception of inadmissible evidence is not reversible error, where the court certifies or the findings show that such evidence did not influence its findings.—*Williams v. Higgin*, 30 Md. 404.

#### § 1055. Exclusion of evidence.

##### *Cross-References.*

Burden to show prejudice from error, see ante, § 1032.

Errors favorable to party complaining, see ante, § 1033.

Immaterial errors as ground of reversal, see post, § 1170.

Presumption as to effect of error, see ante, § 1031.

#### § 1056.— Prejudicial effect in general.

(a) Though, where a letter is forced into evidence by being called for and produced and made evidence for both parties, the whole letter should be considered by the jury, it was harmless error to exclude a part which could in no manner have benefited the party assigning such exclusion as error.—*The Louis Eckels & Sons Ice Mfg Co. v. Cornell Economizer Co.*, 119 Md. 107, 86 Atl. 38.

(b) Where, in an action for the death of a person struck by a train, a witness testified that after decedent had been run over he was crying and said he was dying, the error, if any, in sustaining an objection to a question asked the witness as to how often decedent repeated that expression was not prejudicial to plaintiff.—*State, use of Welsh v. Baltimore & O. R. Co.*, 117 Md. 280, 83 Atl. 166.

(c) Exceptions to evidence, which if admitted would not justify another conclusion

than the one properly reached, will not be considered on appeal.—*Kensington Ry. Co. of Montgomery County v. Moore*, 115 Md. 36, 80 Atl. 614.

(d) Exclusion of irrelevant testimony on a wrong theory is not reversible error.—*Fletcher v. Dixon*, 113 Md. 101, 77 Atl. 326.

(e) Where a master intrusted a third person with the discharge of the duty of making the place for the servants to work reasonably safe, so that he was responsible for any omission in the performance of that duty, the exclusion of evidence of the general reputation of the third person was not prejudicial.—*Pennsylvania Steel Co. of Phila. v. Nace*, 113 Md. 460, 77 Atl. 1121.

(f) Where, in an action for injuries to a servant of a contractor constructing the superstructure of a bridge on concrete piers built by another, caused by the collapse of a pier not sufficiently hardened, there was no offer to show that the pier was not properly constructed, the exclusion of evidence as to sand found about the pier was not prejudicial.—*Pennsylvania Steel Co. of Phila. v. Nace*, 113 Md. 460, 77 Atl. 1121.

(g) Where, in an action for the death of a lineman employed by a telegraph company, by coming in contact with a live wire of a light company, there was nothing to show that the telegraph company was liable as a joint wrongdoer, error, if any, in excluding evidence that decedent's widow had made a bargain with the telegraph company to sue only the light company was not prejudicial.—*Consolidated Gas Electric Light & Power Co. v. State*, 109 Md. 186, 72 Atl. 651.

(h) Where the court declined to issue mandamus to compel a corporation to reinstate petitioner as a member, petitioner was not injured by the sustaining of a motion to strike evidence as to damages caused by his expulsion.—*Ziegenheim v. Baltimore Wholesale Grocery Co.*, 108 Md. 515, 69 Atl. 1071.

(i) It was not reversible error to exclude evidence on the ground that it tended to vary the terms of a letter, although the evidence showed that the letter was not intended to constitute a contract, where the evidence is treated by the appellate court as properly in the case and considered by it

in arriving at its conclusion to affirm the judgment.—*Williams v. United States Fidelity & Guaranty Co.*, 105 Md. 490, 66 Atl. 495.

(j) The rejection of evidence which would not have changed the result, if admitted, is not cause for reversal.—*Black v. First Nat. Bank*, 96 Md. 399, 54 Atl. 88; *Horner v. Buckingham*, 103 Md. 556, 64 Atl. 41.

(k) Where, in an action to recover commissions on prior sales under a selling agent's contract, plaintiff was not entitled to recover for failure to prove that the sales were made in response to inquiries received from its territory, etc., the exclusion of evidence as to the selling price of the apparatus so sold at the time of sale and as to the value of the apparatus was harmless.—*McCay Engineering Co. v. Crocker-Wheeler Electric Co.*, 100 Md. 530, 60 Atl. 443.

(l) The evidence in an action for breach of contract showing that plaintiff, and not defendant, was guilty of the breach, so that plaintiff is not entitled to recover, exclusion of evidence which cannot change this result, and refusal of a prayer as to measure of damages, are harmless error.—*W. V. Guthrie Co. of Baltimore City v. Baltimore Methodist Publishing & Printing Co. of Baltimore City*, 93 Md. 738, 48 Atl. 501.

(m) A verdict will not be disturbed because of the exclusion of proper evidence, where it does not appear that the party was injured thereby.—*Buschman v. Codd*, 52 Md. 202; *Hyatt v. Pollard*, 64 Md. XIII, unreported, 1 Atl. 873 (full report).

(n) Where the evidence excluded would not, with the other evidence in the case, have entitled plaintiff to recover, the exclusion of such evidence is harmless.—*Conser v. Snowden*, 54 Md. 175, 39 Am. Rep. 368.

#### § 1057.—Facts otherwise established.

##### *Cross-Reference.*

Immaterial errors as ground of reversal, see post, § 1170.

(a) Exclusion of evidence is immaterial, the facts to which it referred being established by other admitted evidence.—*Peninsula Produce Exchange of Maryland v. New York, P. & N. R. Co.*, 122 Md. 215, 89 Atl. 437.

(b) Error in striking out part of an answer was harmless, the fact testified to being amply proven by other witnesses and not being controverted.—*Frank Steil Brewing Co. v. Washington, B. & A. Electric R. Co.*, 120 Md. 419, 87 Atl. 838.

(c) Where an individual ledger offered by a bank, in a suit against it by a depositor, as evidence of accounts with the depositor was excluded as evidence per se, but defendant was permitted to offer all the original deposit slips and checks which it claimed were on the ledger, and witnesses were permitted to compare them with the entries on the ledger and to testify that they were all entered on the ledger, any error in rulings as to the ledger's admissibility was not ground for reversal.—*Marine Bank of Crisfield v. Stirling*, 115 Md. 90, 80 Atl. 736.

(d) Where an officer of a city made all the admissions necessary to show that he had notice of complaints about a sewer, the exclusion of other evidence to show notice was not erroneous.—*Kurrie v. City of Baltimore*, 113 Md. 63, 77 Atl. 373.

(e) Where the garnishee testified that he did not owe the judgment debtor anything on the date of the attachment and then gave subsequent dates on which he had paid money to him as shown by receipts, and there was evidence received without objection that the garnishee was not indebted to the judgment debtor at the time of the trial, the error, if any, in refusing the garnishee permission to state as to whom the money in his hands belonged, was not prejudicial to him.—*Farley v. Colver*, 113 Md. 379, 77 Atl. 589.

(f) Where a witness stated that he saw testatrix frequently when she was able to be on the front porch of her house, and the occasions when she could be thus seen were shown by other evidence, the error, if any, in disallowing a question as to the number of times he had seen testatrix on her front porch, was not prejudicial.—*Grill v. O'Dell*, 113 Md. 625, 77 Atl. 984.

(g) There was no reversible error in sustaining an objection to a question, where from the other evidence the jury was in full possession of all the information which

could have been given it.—*Peters v. Tilghman & Purnell*, 111 Md. 227, 73 Atl. 726.

(h) Where plaintiff procured a duplicate of the contract sued on, which was admitted in evidence on the claim that the original was lost, plaintiff was not prejudiced by the exclusion of a portion of his deposition as to the terms of the contract.—*Koch v. Wimbrow Bros.*, 111 Md. 21, 73 Atl. 896.

(i) Rejection of proper testimony is harmless, where the facts involved are otherwise shown.—*Maryland Apartment House Co. v. Glenn*, 108 Md. 377, 70 Atl. 216.

#### § 1058.—Same or similar evidence otherwise admitted.

(a) Rejection of testimony substantially covered by previous testimony of the same witness is harmless.—*Union Trust Co. of New Jersey v. Knabe*, 122 Md. 584, 89 Atl. 1106; *Same v. Schlens*, Id.

(b) In an action for injuries to a traveler from a collision with a telegraph pole, *held*, that error, if any, in the exclusion of evidence as to the erection of a fence after the accident was harmless where the same evidence was subsequently admitted.—*Earp v. Phelps*, 120 Md. 282, 87 Atl. 806.

(c) Error, if any, in excluding evidence as to whether the draftsman, a witness to a will, had written the attestation clause, was harmless where he testified that he did write the attestation clause.—*Conrades v. Heller*, 119 Md. 448, 87 Atl. 28.

(d) In an action for the price of a device, the sustaining of objections to a question whether the engineer of defendant had made complaints as to the efficiency of the device was not prejudicial, where other witnesses had testified to such complaints.—*The Louis Eckels & Sons Ice Mfg. Co. v. Cornell Economizer Co.*, 119 Md. 107, 86 Atl. 38.

(e) The exclusion of a question is not error, where the witness is subsequently permitted to answer the question without objection.—*Sumwalt Ice Co. v. Knickerbocker Ice Co.*, 114 Md. 403, 80 Atl. 48; *Baltimore, C. & A. Ry. Co. v. Moon*, 118 Md. 380, 84 Atl. 536.

(f) Error in excluding evidence is cured by its subsequent admission.—*Goodman v.*

Saperstein, 115 Md. 678, 81 Atl. 695; Balto., C. & A. Ry. Co. v. Trader, 106 Md. 635, 68 Atl. 12; Owens v. Owens, 81 Md. 518, 32 Atl. 247; Higgins v. Carlton, 28 Md. 115, 92 Am. Dec. 666.

(g) In an action against an administrator on a note claimed to have been executed by decedent for services rendered him by plaintiff while she lived with him, any error in excluding a question as to what was plaintiff's position in decedent's household while she was there before his wife's death was not prejudicial to plaintiff where the witness had testified what plaintiff did when she lived with decedent, and also testified that witness would sometimes not be at decedent's house more than once or twice a year, and had moved from the neighborhood about 25 years before she testified.—Harper v. Davis, 115 Md. 349, 80 Atl. 1012.

(h) Any error in excluding a question to plaintiff on cross-examination was harmless, where the same question was repeated in another form and answered without objection.—McCarthy v. Clarke, 115 Md. 454, 81 Atl. 12.

(i) The error, if any, in excluding the testimony of a witness as to whether repairs on a dwelling would restore it to as good condition as before an injury, was not prejudicial where the witness had testified what repairs would put the house in as good condition as possible under the circumstances.—Hanrahan v. City of Baltimore, 114 Md. 517, 80 Atl. 312.

(j) Error in excluding testimony is harmless, where other ample evidence to the same point was permitted.—Jones v. Ortel, 114 Md. 205, 78 Atl. 1030.

(k) It was not reversible error to exclude a question as to where carbon dioxide would accumulate in an excavation, where another expert witness had testified that it would accumulate at the lowest possible level.—State v. Flanigan, 111 Md. 481, 74 Atl. 818.

(l) The exclusion of an answer to the question whether the witness, an engineer, was expected to report when his engine was in bad condition was not prejudicial to defendant, where the witness testified that he received instructions to report the condition of the engine, and that he reported to the

repair shop that it was all right for service.—Maryland, D. & V. Ry. Co. v. Brown, 109 Md. 304, 71 Atl. 1005.

(m) In an action against a carrier to recover damages for delay in transporting a shipment of strawberries, error in excluding evidence of the time of arrival, at the place to which the berries were shipped, of the early morning train carrying berries for market, is rendered harmless by subsequently admitting testimony of other witnesses as to the time of arrival of such train.—Shockley v. Pennsylvania R. Co., 109 Md. 123, 71 Atl. 437.

(n) The error in striking out the answer of a witness for defendant was harmless, where defendant was thereafter permitted to fully testify as to the conversations regarding which the witness had testified in his answer.—King v. Zell & Merceret, 105 Md. 435, 66 Atl. 279.

(o) Alleged error in the exclusion of offered testimony is of no avail if the same testimony or testimony to the same effect had been, or was afterwards, allowed to be given by the witness.—Packham v. Ludwig, 103 Md. 416, 63 Atl. 1048; Baltimore & O. R. Co. v. Deck, 102 Md. 669, 62 Atl. 958.

(p) An error in excluding evidence is harmless where it is admitted at another time or in another form.—Deck v. Balto. & Ohio R. Co., 100 Md. 168, 59 Atl. 650, 108 Am. St. Rep. 399; Steiner v. Deck, Id.; Oldewurtel v. Wiesenfeld, 97 Md. 165, 54 Atl. 969.

(q) No error can be predicated on the exclusion of evidence which is afterwards given by other witnesses.—Baltimore City Pass. Ry. Co. v. Cooney, 87 Md. 261, 39 Atl. 859.

(r) Where defendant's counsel understood the refusal to permit identification to be a refusal to admit the papers in evidence at all, and made no further effort to introduce them, the fact that the papers were afterwards fully identified did not render such refusal harmless.—Caledonian Ins. Co. v. Traub, 80 Md. 214, 30 Atl. 904.

(s) Where the court excluded evidence introduced for the purpose of contradicting a witness, without cause, the error is cured

by a subsequent admission, without objection, of another contradictory statement of the witness.—*Kriete v. Myer & Co.*, 61 Md. 558.

### § 1059.—Error cured by instructions to jury.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 1060. Arguments and conduct of counsel.

#### Cross-References.

Errors favorable to party complaining, see ante, § 1033.

Presumption as to effect of error, see ante, § 1031.

Irregularity cured by action of trial court, see "Trial," § 133.

Withdrawal of remarks as curing error, see "Trial," § 132.

(a) Alleged error in making a statement in argument as within the record, *held*, not prejudicial to defendant insurance company.—*Citizens' Mut. Fire Ins. Co. of Cecil County v. Conowingo Bridge Co.*, 116 Md. 422, 82 Atl. 372.

### § 1061. Demurrer to evidence, dismissal, nonsuit, or direction of verdict.

(a) The granting of a prayer that, under the pleadings and evidence, plaintiff is not entitled to recover, is not prejudicial error, although defendant's plea is bad, where plaintiff has introduced no evidence which would entitle him to recover under any state of pleading.—*Lucente v. Davis*, 101 Md. 526, 61 Atl. 622.

(b) Where the result of a case if submitted to the jury must have been the same as the result reached by the court in directing a verdict, the error, if any, in withdrawing the case from the jury, was harmless.—*Bennett v. Mutual Fire Ins. Co.*, 100 Md. 337, 60 Atl. 99.

### § 1062. Submission of issues or questions to jury.

#### Cross-References.

Errors favorable to party complaining, see ante, § 1033.

Immaterial errors as ground of reversal, see post, § 1170.

Presumption as to effect of error, see ante, § 1031.

(a) Error in submitting to the jury, after withdrawal of defendant's set off, the ques-

tion whether plaintiff was indebted to defendant was harmless, where it clearly appeared that such question was not determined by the jury, and that hence their judgment could not be *res judicata* in a subsequent action upon the claim constituting the basis of the set-off.—*Davison Chemical Co. v. Andrew Miller Co.*, 122 Md. 134, 89 Atl. 401.

(b) Even if an issue made on a prayer to declare defendant insolvent be improperly submitted to a jury, and the findings, therefore, erroneous, yet if, on other prayers, the jury arrive at the same result, and defendant be properly declared insolvent, the judgment will not be reversed.—*Castleberg v. Wheeler*, 68 Md. 266, 12 Atl. 3.

(c) The error of leaving a question of law to the jury is cured by a verdict deciding the question correctly.—*Harmony Fire & Marine Ins. Co. v. Hazlehurst*, 30 Md. 380.

(d) Where the construction of a written instrument is erroneously submitted to a jury, the error is without prejudice, if it appears that they gave it the correct construction.—*Hanson v. Campbell*, 20 Md. 223; *Warner v. Miltenberger*, 21 Md. 264, 83 Am. Dec. 573.

(e) A judgment will not be reversed because the court, at appellee's request, submitted to the jury an immaterial point, which would rather prejudice appellee's case than that of appellant.—*City of Baltimore v. Norman*, 4 Md. 352.

### § 1063. Instructions to jury.

#### Cross-References.

Burden to show prejudice from error, see ante, § 1032.

Declarations of law on trial to court, see post, § 1071.

Errors favorable to party complaining, see ante, § 1033.

Immaterial errors as ground of reversal, see post, § 1170.

Presumption as to effect of error, see ante, § 1031.

Remarks and conduct of judge, see ante, § 1046.

Error in instructions cured by withdrawal or giving other instructions, see "Trial," § 296.

### § 1064.—Prejudicial effect in general.

(a) Where a party is not injured by the rejection of an instruction, there is no



ground for reversal.—*Thomas v. Cortland*, 121 Md. 670, 89 Atl. 414.

(aa) Where appellant does not claim that costs allowed were not proper items of cost, he was not prejudiced by any failure of a prayer to specify more particularly what costs appellee could recover.—*American Bonding Co. of Baltimore v. State*, 120 Md. 305, 87 Atl. 922.

(b) Error in giving an instruction which authorized a verdict upon a certain finding of facts was material, though the verdict was for the precise sum named in another prayer, since the erroneous prayer might have influenced the jury to compromise.—*Warfield v. Keyser*, 119 Md. 158, 86 Atl. 152.

(bb) Modification of a request to charge on plaintiff's contributory negligence by adding a clause requiring the jury to find that the injury would not have been sustained except for plaintiff's want of care and caution, in order to prevent his recovery, *held*, not prejudicial to defendant.—*Knecht v. Mooney*, 118 Md. 583, 85 Atl. 775.

(c) In an action for assault and battery, there was no such inconsistency as to constitute prejudicial error between an instruction that plaintiff could recover, unless he first assaulted defendant or defendant acted in self-defense—that is to say, that the circumstances would have induced a reasonable man of average prudence to make a prior assault to protect himself—and an instruction that, if defendant struck plaintiff under belief that plaintiff was about to strike him, plaintiff could not recover for the injury, if it was not inflicted with unnecessary force and violence.—*Zell v. Dunaway*, 115 Md. 1, 80 Atl. 215.

(cc) While defendant's prayer for a directed verdict was informal, in reciting that "it appears by plaintiff's own testimony," in referring to the facts on which the verdict was requested, such informality was not reversible where plaintiff was not entitled to recover on all the evidence.—*Norris v. Connecticut Fire Ins. Co. of Hartford*, 115 Md. 174, 80 Atl. 960.

(d) In an instruction in an action on a life policy, defended for misrepresentations in the application as to the condition of in-

sured's health, the court instructed that if insured was suffering from Bright's disease or any of the diseases mentioned in the policy, and "that Bright's disease or other diseases mentioned in the policy finally resulted in his death," the jury should find for defendant. *Held*, it being conceded that he died of Bright's disease, the quoted clause, though erroneous, was not prejudicial.—*Mutual Life Ins. Co. v. Robinson*, 115 Md. 408, 80 Atl. 1085.

(dd) Where, in an action by a broker for commissions for procuring a purchaser of real estate, the evidence showed that the broker induced the purchase by bringing the property to the purchaser's attention, with the proposition that the purchaser and himself should buy together, that the purchaser subsequently bought from the owner directly, and there was no claim that the owner knew of the broker's plan, a charge directing a recovery for the owner on the jury finding that the evidence was true, without submitting the issue whether the owner knew of the plan of the broker, was not prejudicial.—*Slagle v. Russell*, 114 Md. 418, 80 Atl. 164.

(e) Where prayers submitted by plaintiff at the close of defendant's testimony were not disposed of until after plaintiff had refused to offer evidence in rebuttal, the overruling of an objection to the reception of the prayers when submitted was not erroneous.—*Dickson v. Fowler*, 114 Md. 344, 79 Atl. 519.

(ee) Where, in an action on a health benefit certificate, defended on the ground of false statements in the application affecting the risk, the court charged that if insurer executed the policy and insured paid the premiums and complied with the stipulations thereof, and if insured was operated on for a disability not contracted within 15 days after the date of the policy and he was disabled from prosecuting his business, he was entitled to recover unless the application contained untrue statements not made in good faith materially affecting the risk, a further charge that if the jury found such facts, and further found that insured informed the agent of insurer that he had on one occasion consulted a physician, but that

he had received no treatment and that the agent advised insured that the statement that he had not received medical attention within a specified time did not refer to such consultation, the verdict should be for insured, was not prejudicial, for insured was entitled to recover irrespective of the charge, on the jury finding the facts stated in the first instruction.—*Ætna Life Ins. Co. of Hartford, Conn. v. Millar*, 113 Md. 686, 78 Atl. 483.

(f) A subcontract required payment to be made when payments were received by the contractor, and if the contractor failed to receive the contract price the subcontractor was to stand his ratio of the loss and expense of suit, and judgment notes had been issued in favor of the contractor upon which judgments by confession were entered. In an action by the subcontractor, where a charge given was objectionable as being directed to the recovery of plaintiff's pro rata part of the balance of the judgments upon the theory of a conversion of his interest in them, without reference to the value of his interest at the time of the conversion, still, where the judgments were assigned without plaintiff's consent, it entitled him to payment of his claim without further delay, and, as his pro rata part of the judgments at their face value was equal to the amount due him under his contract, the defect in the instruction was harmless.—*Rumsey Electrical Mfrs. Co. v. Livers*, 112 Md. 546, 77 Atl. 295.

(ff) Error in an instruction is harmless, where the adverse party is not injured thereby.—*McGaw v. Acker, Merrill & Condit Co.*, 111 Md. 153, 73 Atl. 731.

(g) The action of the court in stating after the prayers had been offered that certain testimony on the subject of damages was improperly received and directing the jury to disregard it, and in modifying after the opening argument to the jury an instruction on the measure of damages by adding thereto a direction to the jury not to award any damages for injuries except those proved by the evidence with a reasonable certainty, and that the testimony of a designated witness as to the effect of certain injuries was too vague to be considered,

though irregular, was not prejudicial.—*United Rys. & Electric Co. of Baltimore v. Carneal*, 110 Md. 211, 72 Atl. 771.

(h) Where the court charges that the possession of the single bill sued on, by plaintiff's intestate, is prima facie evidence of the sealing and delivery of the same, and that, if the jury found the delivery by defendant's intestate to plaintiff's intestate, then plaintiff is entitled to recover "notwithstanding the other facts offered in evidence by defendant," the charge, though too general, by the use of the quoted phrase, is not harmful to defendant, all the material evidence offered by defendant on that issue having been rejected.—*Junkins v. Sullivan*, 110 Md. 539, 73 Atl. 264.

(i) Failure of an instruction on the subject of interest to specify the time from which interest might be allowed is not ground for reversal, it being reasonably certain no injury resulted.—*Oliver & Burr v. Noel Const. Co. of Baltimore City*, 109 Md. 465, 71 Atl. 959.

(j) Code 1904, art. 56, § 135 (changed by Code 1911, art. 56, § 145), makes it the duty of a person operating a motor vehicle to "go as far as practicable to the side of the road" on discovering that his vehicle is frightening an animal. In an action to recover for injuries resulting from failure to comply with that statute, an instruction stated that defendant "did not run to the side of the road." *Held*, that, while it would be better to follow the language of the statute, the error was not sufficient to justify a reversal.—*Fletcher v. Dixon*, 107 Md. 420, 68 Atl. 875.

(k) Where, in an action on contract, a granted prayer as to the measure of damages, while apparently stating a correct rule for assessing damages under the facts in the case, was open to the criticism of being abstract in form and in not referring sufficiently to the facts to instruct the jury in the application of the rule stated to the facts, but there was no conflict of evidence in the evidence going to the damages in the case, and plaintiffs' evidence as to these was offered according to the rule stated, and the verdict of the jury was evidently based on such evidence, the error was harmless.—

Dexter Sulphite Pulp & Paper Co. v. McDonald & Fisher, 103 Md. 381, 63 Atl. 958.

(l) A judgment for plaintiff will not be disturbed because an erroneous instruction given for defendant was inconsistent with a correct one given for plaintiff, where no injury resulted to defendant.—Hogg v. Jackson & Sharp Co., 77 Md. XII, Perkins Ed. unreported, 26 Atl. 869.

(m) An exception to an instruction given upon an immaterial issue will not be considered on appeal, as the party excepting is not injured, if it be erroneous.—Stirling v. Stirling, 64 Md. 138, 21 Atl. 273.

(n) Where the verdict is right on the merits, the judgment will not be reversed on account of errors in the instructions.—Bosley v. Chesapeake Ins. Co., 2 G. & J. 450, 22 Am. Dec. 337; Union Bank v. Planters' Bank, 9 G. & J. 439, 31 Am. Dec. 113; Muliken v. Boyce, 1 Gill 60; Glenn v. Rogers, 3 Md. 312; Walker v. Rogers, 24 Md. 237; Maitland v. Citizens' Nat. Bank, 40 Md. 570; Bannon v. Warfield, 42 Md. 22; State v. Baltimore & P. R. Co., 58 Md. 482; Parker v. Wallis, 60 Md. 15, 45 Am. Rep. 703.

(o) Where the jury allows proper damages, error in the instructions on the subject is harmless.—Baltimore & O. R. Co. v. Pumphrey, 59 Md. 390.

(p) The assumption of fact by a court is not cured by Code 1860, art. 5, § 12, providing that no instructions shall be deemed defective by reason of the assumption therein of any fact, where the jury are instructed on an hypothesis of which there is no evidence.—City of Baltimore v. Poultney, 25 Md. 18. (See Code 1911, art. 5, § 9.)

(q) An erroneous instruction as to the measure of damages is harmless where appellant failed to establish his right to any damages.—Walker v. Rogers, 24 Md. 237.

(r) Want of precision in the instructions given to the jury by the court below will not be cause for reversing the judgment upon appeal, if the appellant has not been prejudiced.—Waring v. Edmonds, 11 Md. 424.

(s) A judgment for defendant will not be reversed upon appeal for an error in an instruction in regard to the plea of limita-

tions where the verdict was against the plaintiff on the plea of nonassumpsit.—Hurst v. Hill, 8 Md. 399.

(t) The giving of an erroneous instruction is not a ground of reversal at the instance of a party in whose favor there could not be a recovery in any view of the evidence.—Ing v. State, 8 Md. 287.

(u) Where a prayer by plaintiffs, though erroneous, operates for the benefit of defendants, the latter cannot complain.—Preston v. Leighton, 6 Md. 88.

(v) Though the court below may have granted instructions, and then declared that there was no evidence to support the fact which the instructions authorized the jury to find, yet the appellants cannot complain, if in fact there was no evidence to sustain the prayers.—Handy v. Johnson, 5 Md. 450.

(w) A judgment will not be reversed because of erroneous instructions given on points wholly immaterial to the issues.—Thurston v. Lloyd, 4 Md. 283.

(x) Erroneous instructions to the jury, not injurious or prejudicial to the party complaining, are no ground for objection.—Dakin v. Pomeroy, 9 Gill 1; Ramsay v. Glass, Id. 56; Clements Lessee v. Smith, Id. 156.

(y) Where an instruction is more favorable to a party than the law would authorize, he cannot allege that it is erroneous.—Planters' Bank v. Bank of Alexandria, 10 G. & J. 346.

(z) There can be no error in submitting a question to the jury in the terms in which it has been joined.—Planters' Bank v. Bank of Alexandria, 10 G. & J. 346.

#### § 1065.—In equitable actions.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 1066.—Applicability to issues and evidence.

(a) Where, in an action for alienation of a husband's affections, defendant neither offered testimony in her own behalf, nor sought to have the cause taken from the jury, but proceeded with the trial and offered prayers based on her theory, that there was no ground of recovery shown,

some of which were granted as the law of the case, a prayer offered by the plaintiff stating the measure of damages in the usual form under the facts of the case could not prejudice the defendant, and was properly given to the jury.—*Hillers v. Taylor*, 116 Md. 165, 81 Atl. 286.

(b) An instruction not based on the evidence is not ground for reversal, when no prejudice is shown.—*Freidenrich v. Baltimore & O. R. Co.*, 53 Md. 201; *Commissioners of Worcester County v. Ryckman*, 91 Md. 36, 46 Atl. 317; *Coffin v. Brown*, 94 Md. 190, 50 Atl. 567, 55 L. R. A. 732, 89 Am. St. Rep. 422.

#### § 1067.—Failure or refusal to charge.

(a) The rejection of prayers merely embodying in a different form the same propositions given in the court's instructions is not prejudicial.—*Horner v. Beasley*, 105 Md. 193, 65 Atl. 820.

(b) A withdrawal from the jury of instructions previously prayed for and granted is no ground for exception by the party offering them if no injustice has been done to him thereby.—*Goldsborough v. Cradie*, 28 Md. 477.

(c) The refusal to give a proper instruction which would have availed the party nothing, the justice of the case not being affected thereby, does not afford sufficient ground for the reversal of a judgment.—*Canby v. Frick*, 8 Md. 163.

#### § 1068.—Error cured by verdict or judgment.

(a) Error in an instruction on the measure of damages, held cured by verdict.—*New York, P. & N. R. Co. v. Peninsula Produce Exchange of Maryland*, 122 Md. 215, 89 Atl. 433.

(b) In an action for the breach of a contract to buy tomatoes at a price named, error in instructing that, on the finding of certain facts, plaintiff's recovery should be the "worth" of the tomatoes was harmless error where the verdict was for less than plaintiff was entitled to under a correct charge.—*Dolby v. Laramore*, 121 Md. 618, 89 Atl. 442.

(c) Where plaintiff recovered a verdict for one cent, the court on defendant's appeal

would not review the instructions on the measure of damages.—*Cushwa v. Burgess & Commissioners of Williamsport*, 117 Md. 306, 83 Atl. 389.

(d) An instruction that, if the jury find for plaintiff, they cannot speculate as to the amount of damage, and unless they find from the evidence a fixed amount they cannot find more than nominal damages, is not prejudicial to plaintiff, where the verdict is for defendant.—*American Syrup & Preserving Co. v. Roberts*, 112 Md. 18, 76 Atl. 589.

(e) In an action for damages resulting from failure to stop at a wharf for a passenger holding a round-trip ticket, error in instructions did not require a reversal of the judgment where the smallness of the verdict found by the jury satisfied the court that the jury were not seriously misled by the instructions as given.—*Rock Creek Steamboat Co. v. Boyd*, 111 Md. 189, 73 Atl. 662.

(f) Where, in an action against a connecting carrier for damages to peaches, the amount of the verdict for plaintiff and the net amount received by him from the sale of the damaged fruit yielded only a trifle more than the minimum price he was to receive for them according to his original contract with the consignee, defendant was not prejudiced by the fact that an instruction for plaintiff on the measure of damages was not sufficiently explicit as to how the jury should ascertain the loss.—*Philadelphia, B. & W. R. Co. v. Diffendal*, 109 Md. 494, 72 Atl. 193, 458.

(g) An error in a charge stating plaintiff's right to recover the contract price of canned goods in not providing for an allowance to defendant for labels furnished, as provided by the contract, was cured, where the verdict provided for the allowance.—*Webster v. P. W. Moore & Son*, 108 Md. 572, 71 Atl. 466.

(h) In an action against a telegraph company for damages resulting from negligent delay in the delivery of a telegram sent to plaintiffs, notifying them of a shipment of cattle, an instruction that plaintiffs were entitled to recover to such an extent as the

jury should believe from the evidence they sustained loss, while erroneous as leaving the question of damages at large, was harmless, the jury finding the precise sum testified to as the actual loss sustained.—*Western Union Telegraph Co. v. N. Lehman & Bro.*, 105 Md. 442, 66 Atl. 266.

(i) An instruction that defendant would be liable for at least nominal damages, if erroneous, was harmless, where the jury found actual damages.—*Regester v. Regester*, 104 Md. 1, 64 Atl. 286.

### § 1069. Conduct and deliberations of jury.

#### *Cross-Reference.*

Presumptions as to effect of error, see ante, § 1031.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 1070. Verdict.

#### *Cross-References.*

Errors favorable to party complaining, see ante, § 1033.

Immaterial errors as ground of reversal, see post, § 1170.

Submission of special interrogatories, see ante, § 1062.

(a) Where the jury omitted to find on one of the issues joined, it was *held*, that it could not operate to the prejudice of plaintiff, his declaration being so essentially defective that no judgment could be rendered thereon in his favor.—*Chapman v. Dixon*, 4 H. & J. 527.

### § 1071. Findings by court or referee.

#### *Cross-References.*

Advisory verdict, see ante, § 1070.

Errors favorable to party complaining, see ante, § 1033.

Immaterial errors as ground of reversal, see post, § 1170.

Presumption as to effect of error, see ante, § 1031.

(a) Where the court strikes out all evidence in a case tending to vary a written policy of insurance, error in refusing prayers that the court sitting as a jury was confined to the written policy and could not consider any verbal representations, etc., is harmless.—*Mutual Life Ins. Co. of New York v. Murray*, 111 Md. 600, 75 Atl. 348.

(b) Where the claims of plaintiffs, as next of kin, to money paid to the administrator for decedent's death, are referred by the

orphans' court to a circuit court for trial, and the issues assume that the deceased came to his death by the negligence of a railroad company, a failure to require the administrator to prove that the death was so caused could not have prejudiced the plaintiffs.—*Dronenburg v. Harris*, 108 Md. 597, 71 Atl. 81.

### § 1072. Decisions on motion for new trial or rehearing.

#### *Cross-References.*

Errors favorable to party complaining, see ante, § 1033.

Immaterial errors as ground of reversal, see post, § 1170.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 1073. Judgment or order.

#### *Cross-References.*

Errors favorable to party complaining, see ante, § 1033.

Immaterial errors as ground of reversal, see post, § 1170.

Dismissal of parties, see ante, § 1036.

(a) An error of 25½ cents in the allowance of interest is not sufficient to justify a reversal.—*Weant v. Southern Trust & Deposit Co.*, 112 Md. 463, 77 Atl. 289.

(b) Where there had been no change of parties in a cause after a verdict had been rendered therein, the party against whom the verdict was rendered was not prejudiced by an entry of judgment thereafter *nunc pro tunc*, even though the court had no power to enter it.—*Stern v. Bennington*, 100 Md. 344, 60 Atl. 17, 108 Am. St. Rep. 433.

(c) Although a judgment is not entered in the mode prescribed, yet, if defendant is not injured thereby, the court need not reverse it.—*Anders v. Devries*, 26 Md. 222.

### § 1074. Proceedings after judgment.

#### *Cross-References.*

Errors favorable to party complaining, see ante, § 1033.

Immaterial errors as ground of reversal, see post, § 1170.

(a) That property sold to bondholders under a corporate mortgage at a resale brought only half as much as on the first sale, because of alleged errors in the order of sale, *held* not to have prejudiced a bondholder, so as to be ground for reversing the

order of sale.—*Middendorf v. Baltimore Refrigerating & Heating Co. of Baltimore City*, 117 Md. 17, 82 Atl. 1047.

# (I) ERROR WAIVED IN APPELLATE COURT.

## *Cross-References.*

Errors waived in intermediate court, see post, § 1082.

Failure to file or delay in filing briefs, see ante, § 770.

Criminal prosecutions, see "Criminal Law," § 1178.

## § 1075. Express waiver.

## § 1076. Proceedings inconsistent with objection.

## § 1077. Failure to move for dismissal.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 1078. Failure to urge objections.

### *Cross-Reference.*

Affirmance on insufficient presentation of case or questions, see post, § 1183.

(a) Where a special exception to plaintiff's prayer is not pressed by counsel in the Court of Appeals, the prayer is not open for objection on that ground.—*City of Baltimore v. J. A. Kinlein & Co.*, 118 Md. 336, 84 Atl. 483.

(b) An exception to the lower court's ruling on evidence, not adverted to on appeal either in the argument or in the brief, and which does not present any matter of importance, may be treated as abandoned.—*Mullen v. Brydon*, 117 Md. 554, 83 Atl. 1025.

(c) An exception to the direction of a verdict in favor of one of the defendants, which is not questioned on appeal, will be regarded as having been waived.—*Baltimore & O. R. Co. v. Wilson*, 117 Md. 198, 83 Atl. 248.

(d) Questions not discussed in appellant's brief will not be considered by the appellate court.—*Fletcher v. Dixon*, 113 Md. 101, 77 Atl. 326.

(e) A point not argued or referred to in appellant's brief will be deemed abandoned.—*Kendrick v. Warren*, 110 Md. 47, 72 Atl. 461; *Stewart v. American Bridge Co.*, 108 Md. 200, 69 Atl. 708.

(f) Errors not discussed on appeal, either in the brief or oral argument of appellant's

counsel, will be deemed waived.—*Metropolitan Sav. Bank v. Manion*, 87 Md. 68, 39 Atl. 90; *Strouse v. American Credit Indemnity Co. of New York*, 91 Md. 244, 46 Atl. 328, 1063; *American Credit Indemnity Co. of New York v. Strouse, Id.*; *Gill v. Staylor*, 93 Md. 453, 49 Atl. 650; *Webster v. P. W. Moore*, 108 Md. 572, 71 Atl. 466.

(g) Where no reference is made either in appellant's brief or in the oral argument to a ruling of the lower court denying a prayer for an instruction, it will be presumed that appellant accepted the ruling as correct.—*Baltimore & O. R. Co. v. Whitehill*, 104 Md. 295, 64 Atl. 1033.

(h) Technical objections to the form of issues in probate proceedings will not be considered on appeal when they are not discussed.—*Stanley v. Safe-Deposit & Trust Co. of Baltimore*, 88 Md. 401, 41 Atl. 790.

(i) On appeal a point not controverted in the argument shall be deemed conceded.—*Smith v. Easton*, 54 Md. 138.

## § 1079. Insufficient discussion of objections.

# (J) DECISIONS OF INTERMEDIATE COURTS.

## *Cross-References.*

Courts subject to review, see ante, § 32.

Decisions reviewable, see ante, §§ 43, 84, 120, 135.

Extent of review dependent on mode of review, see ante, § 861.

Harmless error, see ante, § 1074.

New briefs, see ante, § 773.

New security on appeal from intermediate court, see ante, § 391.

Objection to appeal to intermediate court, see ante, § 228.

Operation of supersedeas in court of first instance on further appeal, see ante, § 483.

Opinion of intermediate court as part of record on further appeal, see ante, § 533.

Questions presented for review by record, see ante, § 711.

Requisites of record, see ante, §§ 512, 532.

Right of review, see ante, § 152.

Statutory provisions, see ante, § 2.

Criminal prosecutions, see "Criminal Law," § 1179.

Review by appeal or writ of error of decision of intermediate court on certiorari, see "Certiorari," § 70.

Review on appeal from justice court, see "Justices of the Peace," §§ 183-185.

**§ 1080. Power to review in general.***Cross-Reference.*

Writ of review, see "Review," § 28.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 1081. Questions considered.***Cross-Reference.*

Necessity of submitting propositions of law, see ante, § 846.

**§ 1082.— Scope of inquiry in general.**

(a) The Court of Appeals cannot review errors or irregularities in the circuit court on an appeal, under Crisfield Charter, § 87, as amended, from the action of the mayor and council in a street widening proceeding, but can only determine whether the circuit court exceeded its jurisdiction.—*Stephens v. City of Crisfield*, 122 Md. 190, 89 Atl. 429.

(b) Where the circuit court sits as an appellate court and no further appeal is given by statute, a motion in arrest held not to authorize the Court of Appeals to review other than jurisdictional questions.—*Stephens v. City of Crisfield*, 122 Md. 190, 89 Atl. 429.

(c) Since a justice of Baltimore county had jurisdiction of a landlord's suit for restitution, and the circuit court for that county had jurisdiction to review the justice's judgment, the Court of Appeals, on appeal from the judgment of the circuit court, can only consider whether the court had jurisdiction to render its decision, and not whether its decision was correct.—*Matthews v. Whiteford*, 119 Md. 122, 85 Atl. 1040.

**§ 1083.— Review dependent on whether questions are of law or of fact.****§ 1084.— Matters not necessary to decision on review.****§ 1085. Review of errors of trial court.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 1086. Review dependent on procedure in intermediate court.***Cross-References.*

Annexing assignments of error to record, see ante, § 747.

Necessity of assignment of errors to rulings of intermediate court, see ante, § 719.

**§ 1087.— Review of decision of trial court.****§ 1088.— Trial de novo in intermediate court.****§ 1089. Nature and grounds of decision of intermediate court.****§ 1090. Cross-appeal.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 1091. Presumptions.**

(a) On appeal from a judgment of the circuit court affirming a judgment of a justice of the peace, the appellate court will not examine a bill of exceptions filed in the circuit court, to determine whether the action before the justice involved the question of title to land.—*Cole v. Hynes*, 46 Md. 181.

**§ 1092. Discretion of intermediate court.***Cross-Reference.*

Discretion of trial court, see ante, § 1085.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 1093. Review of questions of fact.***Cross-Reference.*

Right to stay, see ante, § 458.

**§ 1094.— In general.**

(a) Baltimore City Code, § 170, authorizing an appeal to the Court of Appeals from the determination of the Baltimore City Court reviewing a decision of the Appeal Tax Court as to an assessment of property for taxation, and declaring that the Court of Appeals shall hear and determine the questions involved, does not authorize that court to review questions of fact.—*Isaac Hamburger & Sons v. City of Baltimore*, 106 Md. 479, 68 Atl. 23.

(b) The finding of an intermediate appellate court on a controverted question of fact is binding on further appeal.—*City of Baltimore v. Bonaparte*, 93 Md. 156, 48 Atl. 735.

**§ 1095.— Necessity and effect of findings by intermediate court.***Cross-References.*

Necessity and sufficiency of finding of facts in general, see post, § 1122.

Presumptions where facts are not found, see ante, § 1091.

Question of law or fact, see ante, § 1083.  
Mandamus to compel court to file findings of fact, see "Mandamus," § 3.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### (K) SUBSEQUENT APPEALS.

#### Cross-References.

Allowance of further appeal after remand, see post, § 1220.

Double appeals, see ante, § 15.

Matters constituting part of record, see ante, §§ 516-543.

Pendency of other proceeding for review, see ante, § 13.

Right to appeal, see ante, § 14.

Right to subsequent appeal as affected by amount in controversy, see ante, § 41.

Criminal prosecutions, see "Criminal Law," § 1180.

Drainage proceedings, see "Drains," § 36.

Use of same bill of exceptions on successive appeals, see "Exceptions, Bill of," § 28.

#### § 1096. Scope and extent of review.

(a) Where an objection to a prayer, raised on a second appeal, was not before the appellate court on a former appeal, and could not have been, for the reason that it did not appear in the exceptions to have been raised in the court below, such prayer (so far as that objection is concerned) could not be held to have received the approval of the appellate court, and to be the law of the case to the end.—*Treusch v. Shryock*, 55 Md. 330.

(b) Where, on a former appeal, a cause had been remanded to have an account reformed and restated, an appeal subsequently prayed from an order of the court below, "ratifying an auditor's account stated July 10, 1880, under an order of court passed June 7, 1880, and from all action had here-in respecting the said account and the distribution therein made, and all proceedings subsequent to the remanding of the cause by the Court of Appeals," held, under Code, art. 5, §§ 27, 28, to embrace an appeal from the order of the court below, whereby the exceptions to a former audit were passed upon, and the audit stated in accordance with the appellant's instructions was set aside, and from the opinion of the court establishing the principles by which the audit was to be controlled, and the question of right between the parties settled; these be-

ing proceedings had in the cause after being remanded.—*Reiff v. Horst*, 55 Md. 42.

(c) On a second writ of error an appellate court is bound by its prior decision only upon points distinctly made and determined, and not upon points which might have been, but were not, raised.—*Duvall v. Farmers' Bank*, 9 G. & J. 31; *Tolson v. Tolson*, 8 Gill 376. [Cited and annotated in 34 L. R. A. 346, on conclusiveness of prior decisions on subsequent appeals.]

#### § 1097. Former decision as law of the case in general.

##### Cross-References.

Decision of appellate court as law of the case in lower court, see post, § 1195.

Conclusiveness of judgment of appellate court, see "Judgment," § 642.

Effect on previous decision as to sufficiency of pleading, see post, § 1099.

##### Annotation.

Conclusiveness of prior decisions on subsequent appeals.—34 L. R. A. 321, note.

Conclusiveness of prior decisions where the prior decision is erroneous.—34 L. R. A. 325, note.

(a) A decision on a former appeal is the law of the case on retrial, so far as applicable.—*Green v. State*, 122 Md. 288, 89 Atl. 608.

(b) Questions decided on appeal are res judicata on a subsequent appeal, and throughout all subsequent stages of the action.—*Hammond v. Ridgely*, 5 H. & J. 245, 9 Am. Dec. 522; *Mong v. Bell*, 7 Gill 244; *Emory v. Owings*, 3 Md. 178; *Cumberland Coal & Iron Co. v. Sherman*, 20 Md. 117 [cited and annotated in 34 L. R. A. 322, 330, on conclusiveness of prior decisions on subsequent appeals]; *Colonial Trust Co. v. Gerke*, 116 Md. 352, 81 Atl. 594.

(c) The law as determined and announced on appeal is the law of the case on a new trial and second appeal.—*Smith v. Lord*, 111 Md. 500, 75 Atl. 109.

(d) The decision of a question on a former appeal is the law of the case on a subsequent appeal in the same case.—*Clerklee v. Mundell's Lessee*, 4 H. & J. 497 [cited and annotated in 34 L. R. A. 332, on conclusiveness of prior decisions on subsequent appeals]; *Chappell v. Real-Estate Pooling Co.*, 91 Md. 754, 46 Atl. 982.



(e) A judgment or order of the trial court according to the intimation and direction of the appellate court on a former appeal will not be disturbed.—*Maryland Coal Co. v. Baker*, 85 Md. 688, 36 Atl. 768.

(f) Where, on motion for reargument, a decree is reaffirmed, it becomes binding on the appellate court on a subsequent appeal.—*Worthington v. Hiss*, 75 Md. XII, unreported, 23 Atl. 198.

(g) A former decision of the appellate court upon the same question, as to the same property, under the same will, though not technically an estoppel, will be respected, unless clearly and manifestly erroneous.—*Dugan v. Hollins*, 13 Md. 149.

(h) A decision rendered upon facts appearing in the record, in which the legal effect of those facts is declared, is, in all subsequent proceedings in the case, and so long as the facts themselves appear without material qualification, a final adjudication of the rights of the parties, from which the court cannot depart, nor the parties relieve themselves.—*Preston v. Leighton*, 6 Md. 88; *Brown v. Somerville*, 8 Md. 444. [Cited and annotated in 34 L. R. A. 323, 332, on conclusiveness of prior decisions on subsequent appeals.]

(i) In cases where great public interests are involved, and the decision does not explicitly and definitely settle the rights of the parties litigant, but shows that glaring injustice has been done, and egregious blunders committed, the court will withhold its assent from its own previous adjudications.—*Hammond v. Inloes*, 4 Md. 138. [Cited and annotated in 34 L. R. A. 331, on conclusiveness of prior decisions on subsequent appeals.]

(j) Where a case is remanded, and the trial court proceeds in substantial conformity to the directions of the appellate court, the action of the court below in so doing cannot be questioned on a second appeal.—*Hambleton v. Tenant*, 4 H. & J. 440; *Hammond v. Inloes*, 4 Md. 138. [Cited and annotated in 34 L. R. A. 331, 332, on conclusiveness of prior decisions on subsequent appeals.]

(k) On appeal after a second trial in

ejection, the appellate court is bound by its decision rendered on a similar state of facts on appeal from the judgment in the first trial.—*Hammond v. Inloes*, 4 Md. 138. [Cited and annotated in 34 L. R. A. 331, on conclusiveness of prior decisions on subsequent appeals.]

(1) In article 56 of the original constitution, which provides for the establishment of a Court of Appeals, the words, "whose judgment shall be final and conclusive in all cases of appeal," are declaratory of the quality and legal effect of a decision of the Court of Appeals, and apply to that particular case in which the decision is made, only.—*Hammond v. Ridgely*, 5 H. & J. 245. (See Const. 1867, art. IV, § 15.)

### § 1098. Persons concluded.

#### Annotation.

Conclusiveness of prior decisions as to party.—34 L. R. A. 332, note.

(a) M. held the legal title to certain market property in trust for S., and, after the latter's death, conveyed the same to C., who afterwards reconveyed it to M. to secure a loan. The administrator of S. filed a bill against C. and M., praying that his right to the title and possession of the property be decreed, that a receiver be appointed to sell the same, etc. A decree was passed directing M. to convey the property to the administrator of S. From this decree, C. appealed, and on the appeal the decree was affirmed. *Held*, on an appeal afterwards taken by M., that the affirmance of the decree on the appeal of C. was a conclusive adjudication against any interest which he might have had in the property.—*Musgrave v. Staylor*, 36 Md. 123. [Cited and annotated in 34 L. R. A. 333, on conclusiveness of prior decisions on subsequent appeals.]

(b) If an exposition has been given to a written instrument or a statute fully defining the rights of the parties in respect thereof, it will be deemed irrevocable as to those parties, and those claiming under them.—*Hammond v. Inloes*, 4 Md. 138. [Cited and annotated in 34 L. R. A. 331, on conclusiveness of prior decisions on subsequent appeals.]

### § 1099. Questions concluded.

#### Annotation.

Conclusiveness of prior decisions as to matters of jurisdiction.—34 L. R. A. 334, note.

Conclusiveness of prior decisions as to evidence.—34 L. R. A. 332, note.

Conclusiveness of prior decisions as to matters of pleading.—34 L. R. A. 337, note.

Conclusiveness of prior decisions as to excessive verdicts.—34 L. R. A. 343, note.

(a) H. brought proceedings to enforce a mechanic's lien on his behalf "and also for such other persons interested herein who may contribute thereto." An answer was filed admitting all the facts and consenting to a decree, which was passed. Subsequently H. assigned his claim to B. The property was sold, and the sale ratified. C. and J. filed a petition alleging that they were the only mechanics' lienors, and as such were preferred creditors, and denying and excepting to any lien that H. claimed, and they were made parties defendant at their request. Orders were made allowing a fee to a trustee and allowing claims of C., J., and B. Exceptions were filed to the allowance of the claims and dismissed, and appeals were taken from the court's orders therein. On appeal it was held that the exceptions apart from the trustee's fee, which could not be allowed, were insufficient, and the orders were reversed and the case remanded that a new account might be stated, disallowing the trustee's fee, "and distributing the net proceeds of sale in accordance with the views herein expressed." *Held*, that the decision of the court that there was no error in the orders appealed from except as to the fee operated as a final adjudication of C.'s and J.'s rights, which could not be again made the subject of attack.—*Title Guarantee & Trust Co. v. McCulloh*, 108 Md. 48, 69 Atl. 434.

(b) Where, on a former appeal, a certain granted prayer was not affirmed, approved, or discussed, but the judgment was reversed and remanded solely for errors in the admission of evidence, the prayer was not binding on the trial court or the appellate court as the law of the case. (On motion for rehearing.)—*Baltimore Belt R. Co. v. Sattler*, 102 Md. 595, 62 Atl. 1125, 64 Atl.

507. (For former appeal, see 100 Md. 306, 59 Atl. 654.)

(c) Decision on a prior appeal in the same cause and between the same parties that the state cannot have a sale of a canal for satisfaction of its liens waived in favor of bondholders secured by mortgage on the revenues till it clearly appears that the canal cannot be operated so as to produce revenue applicable to payment of the bonds, is the law of the case.—*State v. Cowen*, 94 Md. 487, 51 Atl. 171.

(d) The court will not, on exception to the allowance of an item in the trustee's account, examine the question, where on a former appeal the question has been decided.—*Burroughs v. Bunnell*, 70 Md. 18, 16 Atl. 447.

(e) The appellate court decided that, if certain papers were duly verified and proved, the complainant would be entitled to the relief asked, and remanded the case to the court below. In that court the deficiency was supplied, and the relief prayed for was granted. On appeal from this judgment, the appellate court held that, having already decided the question, the decree must be affirmed.—*Eyler v. Hoover*, 8 Md. 1. [*Cited and annotated in 34 L. R. A. 330, on conclusiveness of prior decisions on subsequent appeals.*]

(f) When a ruling under which a will has been sustained is affirmed by the appellate court, all questions as to prior wills, presented by the record, become immaterial, and will not be considered.—*Pegg v. Warford*, 7 Md. 582.

(g) A construction put upon a written contract by the appellate court will be adhered to as the law of the case in the same litigation.—*Hammond v. Inloes*, 4 Md. 138 [*cited and annotated in 34 L. R. A. 331, on conclusiveness of prior decisions on subsequent appeals*]; *Mitchell v. Mitchell*, 6 Md. 224.

### XVII. DETERMINATION AND DISPOSITION OF CAUSE.

#### Cross-References.

Dismissal, see ante, §§ 775-807.

Accounting of executor or administrator, see "Executors and Administrators," § 510.

Actions relating to wills or probate, see "Wills," § 401.  
 Actions to foreclose mortgages, see "Mortgages," § 579.  
 Admiralty, see "Admiralty," § 119.  
 Allowance of claims by probate court, see "Executors and Administrators," § 256.  
 Appeal from judgment confirming municipal assessment, see "Municipal Corporations," § 508.  
 Appeals from justices' courts, see "Justices of the Peace," §§ 187-190.  
 Appeals from municipal courts, see "Courts," § 190.  
 As infringement of right to jury trial, see "Jury," § 37.  
 Bankruptcy proceedings, see "Bankruptcy," § 468.  
 Condemnation proceedings, see "Eminent Domain," § 263.  
 Criminal prosecutions, see "Criminal Law," §§ 1181-1193.  
 Directions to lower court as to costs, see "Costs," § 245.  
 Drainage proceedings, see "Drains," § 36.  
 Effect of determination of appeal on lien of judgment, see "Judgment," § 800.  
 Election contests, see "Elections," § 305.  
 Habeas corpus proceedings, see "Habeas Corpus," § 113.  
 Highway proceedings, see "Highways," § 58.  
 In actions of forcible entry and detainer, see "Forcible Entry and Detainer," § 43.  
 In mandamus proceedings, see "Mandamus," § 187.  
 Insolvency proceedings, see "Insolvency," § 183.  
 In suits for divorce, see "Divorce," §§ 186, 187.  
 In suits for infringement of patents, see "Patents," § 324.  
 On appeal from allowance of alimony or suit money, see "Divorce," § 287.  
 On review by United States Circuit Court of Appeals of orders or decrees relating to provisional remedies, see "Courts," § 407.  
 On review in United States Supreme Courts of decision of state courts, see "Courts," § 400.  
 Probate proceedings, see "Wills," §§ 387-392.  
 Proceedings for sale of real estate of decedent, see "Executors and Administrators," § 358.  
 Review of proceedings of county board, see "Counties," § 205.

#### (A) DECISION IN GENERAL.

##### *Cross-References.*

Appeals from justices' courts, see "Justices of the Peace," § 187.  
 Criminal prosecutions, see "Criminal Law," § 1181.  
 Necessity of filing opinion, see "Courts," §§ 104, 105.  
 Probate proceedings, see "Wills," § 388.

#### § 1100. Necessity of decision.

##### *Cross-References.*

Dismissal where review unnecessary or ineffectual, see ante, § 790.  
 Matters not necessary to decision, see ante, § 843.

(a) The act of 1831, c. 319, requiring the appellate court to decide all exceptions taken by either side in the trial below, relates only to cases sent back under a *procedendo*, and does not apply to cases where judgments are affirmed in the appellate court.—*Boehme v. Carr*, 3 Md. 202. (See Code, art. 5, § 21.)

#### § 1101. Decision on consent.

#### § 1102. Decision on default.

#### § 1103. Appeals from same decision by adverse parties.

##### *Cross-Reference.*

Decision of one appeal as ground for dismissal of the other, see ante, § 790.

#### § 1104. Double appeals by same party.

##### *Cross-Reference.*

Decision of one appeal as ground for dismissal of the other, see ante, § 790.

#### § 1105. Consolidated causes.

##### *Cross-References.*

Decision of one appeal as ground for dismissal of the other, see ante, § 790.  
 Right to consolidate, see ante, § 15.  
 Right to separate appeals in related causes, see ante, § 16.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 1106. Remand without decision.

##### *Cross-References.*

Leave to apply to lower court for relief, see post, § 1121.  
 Loss of record as ground for remand, see ante, § 543.  
 Reversal with leave to perfect motion for new trial, see post, § 1121.

(a) Where the court on appeal from a decree dissolving an injunction which, however, was continued in force pending the appeal, remanded the case without affirming or reversing the decree, the injunction continued as if the order dissolving it had not been made.—*Baltimore & O. R. Co. v. Silbereisen*, 121 Md. 420, 89 Atl. 102.

(b) The court will not dispose of the question of costs, where it remands the case without affirming or reversing the decree.—

Baltimore & O. R. Co. v. Silbereisen, 121 Md. 420, 89 Atl. 102.

(c) Where certain defendants expressly deny the allegation of the bill that it will be for the benefit of all parties that the real estate be sold, and another defendant demands full proof thereof, and the record on appeal from a decree for sale contains no evidence, and the agreement of facts or the opinion of the trial court does not refer to this question, though the decree is not attacked on appeal for lack of testimony to sustain it, the cause will be remanded, without affirmance or reversal, for further proceedings, under Code, art. 5, § 38, authorizing this where it appears that the substantial merits will not be determined by a reversal or affirmance.—Carlin v. Harris, 100 Md. 49, 59 Atl. 122.

(d) Where a petition for an injunction, founded on the bill and exhibits, to restrain police commissioners from paying probationary police officers their salaries, alleging that they were appointed without having been nominated by the board of examiners, was denied, and an appeal taken, the cause will be remanded, so that an answer may be filed, and proof made of the nomination, without reversing or affirming the order, as authorized by Code, art. 5, § 38, providing that where the substantial rights will not be determined by reversal or affirmance, or justice will be promoted by permitting amendment of the pleadings, or introduction of further evidence, the cause may be remanded without affirmance or reversal.—Keyser v. Upshur, 92 Md. 726, 48 Atl. 399.

(e) When a decree directing a partition is not incorrect, and it does not appear that the substantial merits of the case could be determined if the cause was affirmed, it will be remanded, under Code, art. 5, § 38, without reversing or affirming the decree, that an order for such further proceedings be had as will present the case upon its merits.—Bull v. Pyle, 41 Md. 419.

(f) Where the decision of the judge below was erroneous upon a most material point, which has since been rendered legally sufficient, the appellate court, without affirming or reversing, will remand the cause

for further proceedings to be had in conformity with the opinion.—Cunningham v. Dwyer, 23 Md. 233.

(g) In this case there appeared to be a clerical error in the decree, and the court, neither affirming nor reversing it, remanded the case, to be proceeded with below according to the opinion pronounced by the court.—Cox v. Harris, 17 Md. 23.

(h) To authorize the appellate court to remand a cause under act 1832, c. 302 (Code, art. 5, § 38), the record must indicate that the ends of justice will be promoted by such further proceedings.—General Ins. Co. v. United States Ins. Co., 10 Md. 517, 69 Am. Dec. 174.

(i) A complainant, after proving his tenancy in common with the defendant, and alleging in his bill for partition that the defendant has refused to make partition, that the property is incapable of division, and that a sale would be advantageous to both parties, and joining a prayer for special relief by a sale, with a prayer for general relief, may have the case remanded, under act 1832, c. 302, § 6 (Code, art. 5, § 38), to take such proof of the allegations in the bill as justice may require.—Campbell v. Lowe, 9 Md. 500, 66 Am. Dec. 339.

(j) Where defects appear in a bill in the appellate court the defects may be cured by amendment and further proceedings in the court below under act 1832, c. 302 (Code, art. 5, § 38).—Chaney v. Tipton, 11 G. & J. 253.

(k) In a case before the Court of Appeals, when neither a reversal nor affirmance of the chancellor's decree will determine the merits of the cause, it will be remanded to the court of chancery, and the parties given an opportunity to amend the bill, answers, and other proceedings in the cause, make new parties thereto, file the proper exhibits, and take such testimony as the nature of the case may require.—Kent v. Taneyhill, 6 G. & J. 1; Evans v. Iglehart, Id. 171; Claggett v. Hall, 9 G. & J. 80; Buchanan v. Torrance, 11 G. & J. 342.

(l) Upon a bill filed by an executor against a husband and his wife, who was one of the distributees of the estate, the wife never having answered, and no reason appearing

on the record why she had not been compelled to do so, the Court of Appeals refused to pass any final decree, but remanded the cause under act 1832, c. 302 (Code, art. 5, § 38).—*Lyles v. Hatton*, 6 G. & J. 122.

### § 1107. Effect of change in law.

#### Annotation.

See Code [Vol. 3], art. 1, § 2A, and art. 89A, § 1, as to penalty, forfeiture or liability incurred under a statute repealed or amended.

(a) On appeal from an order granting a railroad company the right to construct bridges over a canal under the control and jurisdiction of the circuit court, the rights of the parties must be determined according to the law as it stands at the time of the filing of the opinion of the appellate court.—*Chesapeake & O. Canal Co. v. Western Maryland R. Co.*, 99 Md. 570, 58 Atl. 34.

(b) On appeal from an order dismissing a petition to review the action of a registration officer in striking the name of petitioner from the list of voters on the ground that he was disqualified under the provisions of act 1890, c. 573, it appeared that the act referred to had been wholly repealed by act 1896, c. 202, providing for the registration of voters. *Held*, that the determination of the appeal being governed by existing law, in view of which the petitioner had suffered no injury, the appeal will be dismissed.—*Meloy v. Scott*, 83 Md. 375, 35 Atl. 20; *Turner v. Bryan*, 83 Md. 373, 35 Atl. 21.

(c) The appellate court must decide and dispose of the case according to the law as it exists at the time of its final judgment, and not as it existed at the time of appeal.—*Day v. Day*, 22 Md. 530; *City of Annapolis v. State*, 30 Md. 112; *Wade v. St. Mary's Industrial School*, 43 Md. 178; *Montague v. State*, 54 Md. 481.

(d) A judgment correctly rendered under article 4, § 9, Const. 1864, and act 1865, c. 187, then in force, but which does not conform to article 4, § 8, Const. 1867, and act 1868, c. 188, since enacted, extending the right of removal, will be reversed, and the removal of the cause allowed.—*Price v. Nesbitt*, 29 Md. 266. [*Cited and annotated in 37 L. R. A. (N. S.) 935, on effect of repeal of civil statute pending motion for new*

trial or appeal from judgment based thereon.]

(e) When the court below has properly rejected a witness as incompetent, and his incompetency has been removed by law before the case is heard on appeal, the appellate court will remand the cause for further proceedings.—*Cunningham v. Dwyer*, 23 Md. 219.

(f) Act 1856, c. 352, repealing the stamp laws, removes all objection to a bond for want of a stamp, and authorizes the appellate court to reverse a decision of an inferior court refusing to admit the bond in evidence because not stamped, though the repealing act was not passed until after such decision was made.—*State v. Norwood*, 12 Md. 177.

### § 1108. Effect of change in state of facts.

(a) Where an appeal is taken from a judgment of an inferior court, the appellate court, in considering its correctness, will confine itself to the state of the case at the time it was rendered, and will not look to anything subsequent thereto appearing in the record.—*Johnston v. George*, 6 Md. 452.

### § 1109. Effect of death or change of parties.

(a) The judgment of the county court will be affirmed where the cause is abated by reason of the death of the appellant.—*Hutchings v. Cavalier*, 3 H. & McH. 389; *Queen v. Ashton*, Id. 439.

### § 1110. Scope of decision in general.

#### § 1111.— On appeal or writ of error.

#### § 1112.— On case or question reserved or certified.

#### § 1113.— On trial de novo.

#### Cross-Reference.

Cases triable de novo and proceedings thereon, see ante, §§ 892-899.

### § 1114.— On appeal from intermediate court.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 1115. Scope and extent of relief.

#### § 1116.— In general.

(a) Where a judgment in ejectment rendered in the old general court in 1802 had been confirmed in the Court of Appeals in

1803, and an application for an injunction made the same year to the court of chancery was refused, and the decree was confirmed on appeal several years after, the terms of the demise laid in the declaration having expired, it was enlarged by the court which affirmed the decree to enable the plaintiff at law to proceed on his judgment.—*Turner v. Worthington*, 5 H. & J. 437, note a.

**§ 1117.—To appellee or defendant in error.**

**§ 1118.—Between co-parties.**

*Cross-Reference.*

Reversal as to one or more co-parties, see post, §§ 1173, 1180.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 1119.—To parties not appealing or complaining.**

*Cross-Reference.*

Reversal as to co-parties not appealing, see post, § 1173.

(a) A decree will not be reversed for the benefit of a party who has not appealed.—*Lanahan v. Latrobe*, 7 Md. 268.

(b) The reversal of a judgment as to the sole appellant leaves the judgment undisturbed as to parties not appealing.—*Lead-eham v. Nicholson*, 1 H. & G. 267.

**§ 1120.—Incidental relief to unsuccessful party.**

(a) On affirmance of an order overruling a demurrer to an answer setting up limitations, the cause will not be remanded to permit plaintiff to reply, if he refused to do so when given the opportunity after the demurrer was overruled below.—*Wiley v. Heaps*, 89 Md. 44, 42 Atl. 906.

**§ 1121.—Leave to apply to lower court for trial.**

*Cross-References.*

Affirmance without prejudice to other remedies in general, see post, § 1139.

Application to appellate court for leave after remand, see post, § 1217.

**§ 1122. Findings and conclusions.**

*Cross-References.*

Power to review decisions of intermediate court dependent on findings of fact, see ante, § 1095.

Necessity for purpose of reviewing decision of intermediate court, see ante, § 1095.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 1123. Divided court.**

*Cross-References.*

As ground for rehearing, see ante, § 830.

As law of the case, see ante, § 1097.

Decision by divided court as res adjudicata on subsequent proceedings below, see post, § 1195.

Decision of question of fact by divided court as affecting review on further appeal, see ante, § 1094.

On motion for rehearing, see ante, § 833.

(a) The judgment will be affirmed, or exceptions overruled, where the appellate court is divided in opinion.—*Partridge v. Dorsey*, 3 H. & J. 302; *Hammond v. Ridgely*, 5 H. & J. 245, 9 Am. Dec. 522; *Gregg v. City of Baltimore*, 14 Md. 479.

(b) A judgment on appeal will be affirmed on equal division of the court.—*Mitchell v. Mitchell*, 10 Md. 234.

**(B) AFFIRMANCE.**

*Cross-References.*

Defects in abstract of record, see ante, § 592.

Defects in brief, see ante, § 766.

Defects in record in general, see ante, § 634.

Defects or errors in making bill of exceptions, see ante, § 637.

Delay or failure to take proceedings, see ante, § 356.

Effect of dismissal of appeal as affirmance, see ante, § 803.

Effect of striking out bill of exceptions, case, or statement, see ante, § 555.

Enforcement by lower court of judgment or order affirmed, see post, § 1204.

Failure to appear, see ante, § 434.

Failure to assign errors in brief, see ante, § 758.

Failure to file or serve briefs, or to file or serve in time, see ante, § 773.

Failure to file record in time, see ante, § 627.

Failure to make bill, case, or statement, see ante, § 554.

Failure to make or file assignment of errors, see ante, § 753.

Failure to pay fees on appeal, see ante, § 370.

Omissions in record, see ante, § 635.

On abandonment of appeal, see ante, § 805.

On consent, see ante, § 1101.

Reasons for decision, see ante, § 854.

Appeals from justices' courts, see "Justices of the Peace," § 189.

Appeals from municipal courts, see "Courts," § 190.

Award of costs on affirmance, see "Costs," § 233.

Criminal prosecutions, see "Criminal Law," § 1182.

Following state statutes and practice in federal courts, see "Courts," § 356.

On review by United States Supreme Court of decision of state court, see "Courts," § 400.

Right to equitable relief against judgment affirmed, see "Judgment," § 410.

#### § 1124. On motion.

##### *Cross-Reference.*

Voluntary dismissal by appellant after motion to affirm, see ante, § 776.

#### § 1125.— In general.

#### § 1126.— Grounds.

#### § 1127.— Proceedings and determination.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 1128. On hearing in general.

#### § 1129.— Determination on merits.

(a) A judgment rendered upon a declaration containing several counts will not be reversed when one count is sufficient in substance, although other counts are insufficient.—Huffer v. Miller, 74 Md. 454, 22 Atl. 205.

#### § 1130.— Decision pro forma.

#### § 1131.— Preserving existing status pendente lite.

#### § 1132.— Decision by intermediate court.

#### § 1133. Insufficient presentation of case or questions.

##### *Cross-Reference.*

Waiver of error, see ante, §§ 1075-1079.

#### § 1134. Error not shown.

##### *Cross-Reference.*

Dismissal where error not shown, see ante, § 788.

#### § 1135.— In general.

#### § 1136.— As to part of grounds of decision.

#### § 1137. Defects or errors on part of appellant or plaintiff in error.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 1138. Reversal ineffectual or not beneficial.

##### *Cross-Reference.*

Dismissal where review unnecessary or ineffectual, see ante, § 790.

(a) If the court improperly orders the production of a paper at the trial, and the

party produces it, the judgment will not be reversed for such error, as sending the case back for trial would not place the party in the same situation that he was in before producing the paper. His remedy is to refuse to comply with the order to produce, and, if judgment by default is rendered against him, appeal therefrom.—Drury v. Young, 58 Md. 546, 42 Am. Rep. 343.

(b) When, in a suit by a property owner to enjoin the construction of a street railway, the time within which the charter requires the road to be completed expires pending a temporary injunction, plaintiff cannot assert on appeal that the injunction should have been granted on the ground that the time for the completion of the road had expired.—Hiss v. Baltimore & H. Pass. Ry. Co., 52 Md. 242, 36 Am. Rep. 371.

(c) A judgment is not reversible for error, if, immediately after the reversal, or upon a new trial, the same judgment must be again rendered.—Stewart v. Spedden, 5 Md. 433; Benson v. Atwood, 13 Md. 20, 71 Am. Dec. 611; Washington v. Williamson, 23 Md. 244.

#### § 1139. Conditions in general.

##### *Cross-Reference.*

Leave to apply to lower court for relief, see ante, § 1121.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 1140. Remission of part of recovery.

##### *Cross-References.*

Accepting remittitur on application for writ of error, see ante, § 454.

By trial court as ground for reversal, see post, § 1169.

Effect on liability on appeal bond, see post, § 1232.

Error as to amount as ground of reversal, see post, § 1171.

Modification of judgment as to amount of recovery, see post, § 1151.

As condition of denying motion for new trial, see "New Trial," § 162.

Exaction of remittitur as infringement of right to trial by jury, see "Jury," § 37.

Remission of excessive damages at trial, see "Damages," § 228.

(a) Where the Court of Appeals holds that certain evidence as to one of several items claimed by appellee was improperly received, but cannot say that the amount

recovered, less such item, would be the proper recovery, the court has no power to entertain an offer by appellee to remit the amount of such item so as to end the litigation, even in view of Code, art. 5, §§ 15, 17, and art. 26, § 14.—*Noel Const. Co. v. Armored Concrete Const. Co.*, 120 Md. 237, 87 Atl. 1049.

(b) Under the express provisions of Code, art. 5, §§ 17, 19, a judgment for an amount in excess of that laid in the declaration is not to be reversed, but plaintiff may release the excess, and the Court of Appeals may enter a proper judgment.—*Finch v. Mishler*, 100 Md. 458, 59 Atl. 1009.

(c) Where judgment is entered on a verdict for an excessive amount, no release or other act of the plaintiff can give it validity, but under act 1811, c. 161 (Code, art. 4, § 19), providing that plaintiff below, or his legal representative in the Court of Appeals, may enter a release on the record of damages exceeding those laid in the declaration, the court can permit the plaintiff to release the excess, and enter a release on record, and amend the record by entering a judgment for the proper amount.—*Harris v. Jaffray*, 3 H. & J. 543.

#### § 1141. Rendering final judgment.

##### *Cross-Reference.*

Enforcement by lower court of judgment of appellate court, see post, § 1206.

#### § 1142.—In general.

(a) The Court of Appeals has the power to award the writ of mandamus without sending back the case under procedendo, when it appears that the judgment of the court below was merely a judgment for costs, and no reason existed why a procedendo should be issued.—*Weber v. Zimmerman*, 23 Md. 45.

#### § 1143.—On affirming order granting new trial.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 1144. Ordering new trial and directing further proceedings in lower court.

(a) Where, under Code, art. 5, § 22, a prayer for a peremptory instruction was granted on an erroneous theory, and the

declaration was technically insufficient to support a recovery, the judgment would be affirmed, but the case would be remanded for a new trial, when plaintiff could amend the declaration to cure its defects.—*Dudley A. Tyng & Co. v. Woodward*, 121 Md. 422, 88 Atl. 243.

(b) On the affirmance of a decree denying a tenant specific performance of a provision in the lease requiring the lessor to restore the buildings on their destruction, the appellate court will not remand the cause for the purpose of determining the rights of the tenant as to expenditures made by him in removing the building on the order of the building inspector, where there is nothing contained in the record showing that he had expended money for that purpose.—*Kirby v. Wylie*, 108 Md. 501, 70 Atl. 213.

(c) Code, art. 5, § 22, provides that in all cases where judgment shall be reversed or affirmed by the Court of Appeals, and it shall appear that a new trial ought to be had, such new trial shall be awarded, etc., to the end that the cause may be again tried as if it had never been tried, and no writ of procedendo with a transcript of the record shall be transmitted. *Held*, that, where an order sustaining a demurrer to a declaration is affirmed because of duplicity, but the declaration discloses substantial grounds of action against defendant, the case will be remanded for a new trial.—*Milske v. Steiner Mantel Co.*, 103 Md. 235, 63 Atl. 471, 5 L. R. A. (N. S.) 1105, 115 Am. St. Rep. 354.

(d) Code, art. 5, § 38, declares that if it shall appear to the Court of Appeals that the substantial merits of a cause will not be determined by the reversing or affirming of any decree or order, or that the purpose of justice will be advanced by permitting further proceedings, the court may remand the case for further proceedings. *Held*, that, after the Court of Appeals has entered a final order of affirmance, it is without power to remand a case upon an ex parte application, alleging that because of facts not appearing in the record, and contradictory to an agreed statement of facts upon which the case was decided, substan-



tial justice has not been done.—*Smith v. Hooper*, 95 Md. 16, 51 Atl. 844, 54 Atl. 95.

(e) A petition for mandamus was dismissed without a trial on the merits, and an appeal presented only technical questions of pleading. The case involved the title to a public office. *Held*, that, though the judgment was affirmed, it was a proper case for the exercise of the discretion given the Court of Appeals by Code, art. 5, § 22, when in its judgment the ends of justice will be promoted, to remand a cause to the lower court for trial on its merits.—*Crea-ger v. Hooper*, 83 Md. 490, 35 Atl. 159.

(f) Where property was sold, and the proceeds brought into court by consent of parties, and the cause was dismissed below, and the court above held the complainant not entitled to the fund, yet the cause was remanded to have it distributed according to the rights of the different defendants.—*Greer v. Baughman*, 13 Md. 257.

(g) The Court of Appeals is empowered, by the act of 1826, c. 200, § 10 (Code, art. 5, § 22), to order a procedendo, on the affirmance of a judgment on demurrer, where the merits of the case, as disclosed by the record, render it proper to do so.—*Kennerly v. Wilson*, 2 Md. 245.

(h) On affirming a judgment of the county court sustaining a demurrer to the plaintiff's rejoinder, the appellate court refused to award a procedendo.—*Watchman v. Crook*, 5 G. & J. 240.

#### § 1145. Effect of affirmance.

##### *Cross-References.*

On power of trial court to grant new trial, see post, § 1202.

Conclusiveness of judgment of appellate court, see "Judgment," § 642.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### (C) MODIFICATION.

##### *Cross-References.*

Amendment, modification, or setting aside of appellate court's own judgment, see post, § 1185.

Effect on liability on bond, see post, § 1229.

Reversal in part, see post, § 1172.

Appeals from justices' courts, see "Justices of the Peace," § 189.

Award of costs on modification, see "Costs," § 234.

Criminal prosecutions, see "Criminal Law," § 1184.

Effect on title of purchaser at execution sale, see "Execution," § 276.

Effect on title of purchaser at judicial sale in general, see "Judicial Sales," § 54.

Effect on title of purchaser at sale on foreclosure of mortgage, see "Mortgages," § 539.

In suits for divorce, see "Divorce," § 186.

Proceedings for allowance of compensation to executor or administrator, see "Executors and Administrators," § 501.

#### § 1146. Power to modify judgment or order.

##### § 1147. On motion.

##### § 1148. On hearing in general.

##### § 1149. Amendment of defects and correction of errors.

##### § 1150. (Omitted from this title in the classification used herein.)

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

##### § 1151. Modification as to amount of recovery.

##### *Cross-References.*

Error as to amount as ground of reversal, see post, § 1171.

Remission of part of recovery as condition of affirmance, see ante, § 1140.

On appeal from municipal courts, see "Courts," § 190.

(a) Where the Court of Appeals held that certain evidence as to one of several items claimed by appellee was erroneously received, but could not say on the record whether on the other evidence a recovery on such item would be justified, or even that such item was included by the jury in the verdict for appellee, the court could not deduct the amount of such item from the judgment for the balance.—*Noel Const. Co. v. Armored Concrete Const. Co.*, 120 Md. 237, 87 Atl. 1049.

(b) The court below having incorrectly allowed interest on installments of a subscription for corporate stock, as a matter of right, the appellate court has no power to remit the amount of such interest, and the judgment must be reversed.—*Frank v. Morrison*, 55 Md. 399.

(c) The Court of Appeals will direct an audit to be made, and new accounts to be stated, where it is necessary to enable them to pass a final decree in the cause.—*Differderfer v. Winder*, 3 G. & J. 311.

##### § 1152. Modifying provisions of judgment or order.

(a) The granting of costs against the

State of Maryland forms no objection to the validity of a judgment; but if it did, while remaining in the record, constitute a fatal objection to the judgment, it is a mere clerical error, which appellees will be permitted to cure by an amendment of the judgment.—*State v. Turner*, 8 G. & J. 125.

(b) Where the court below dismisses a bill absolutely, which should have been dismissed without prejudice to future proceedings by the complainant, the error must be corrected by reversing the decree, and passing a new one accordingly.—*Griffith v. Frederick County Bank*, 6 G. & J. 424.

(c) Where the facts show the complainant has equity, a decree dismissing the bill in the court below will be modified so as to dismiss it without prejudice.—*Stewart v. Stone*, 3 G. & J. 510.

**§ 1153. Rendering judgment which lower court should have rendered.**

(a) The appellate court, reversing a judgment, may render such judgment as the court below should have rendered.—*Wroth v. Johnson*, 4 H. & McH. 284; *Ellicott v. Ellicott*, 6 G. & J. 35.

(b) On reversing a chancery decree the appellate court may enter the judgment which the lower court should have rendered.—*Diffenderffer v. Winder*, 3 G. & J. 811.

**§ 1154. Directing judgment or order of lower court.**

*Cross-Reference.*

Rendition and entry in lower court of judgment directed, see post, § 1207.

**§ 1155. Compelling or directing restitution.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**(D) REVERSAL.**

*Cross-References.*

Affirmance where reversal ineffectual or not beneficial, see ante, § 1138.  
 Defects in brief, see ante, § 758.  
 Defects in record, see ante, § 635.  
 Failure to file or serve briefs, or to file or serve in time, see ante, § 773.  
 Failure to join in error, see ante, § 749.  
 On default, see ante, § 1102.  
 Reversal and remand to correct record, see ante, § 657.

Appeals from justices' courts, see "Justices of the Peace," § 189.

As infringement of right to jury trial, see "Jury," § 37.

Award of costs on reversal, see "Costs," §§ 236, 237.

Criminal prosecutions, see "Criminal Law," §§ 1186-1190.

Finality of judgment of reversal as affecting jurisdiction of United States Circuit Court of Appeals, see "Courts," § 405.

In suits for divorce, see "Divorce," § 186.

Necessity of filing opinion, see "Courts," § 104.

On review by United States Supreme Court of decision of state court, see "Courts," § 400.

Probate proceedings, see "Wills," §§ 390, 391.

Removal of cause to federal court after reversal, see "Removal of Causes," § 15.

**§ 1156. On motion.**

**§ 1157. On hearing in general.**

**§ 1158.— Determination on merits.**

**§ 1159.— By court on its own motion.**

**§ 1160.— By request of parties.**

**§ 1161.— On confession of error.**

**§ 1162.— Error corrected in lower court or before hearing on appeal.**

**§ 1163.— Decision by intermediate court.**

**§ 1164. Errors on part of appellant or plaintiff in error.**

*Cross-Reference.*

Affirmance, see ante, § 1137.

**§ 1165. Defects in proceedings not attributable to appellant or plaintiff in error.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 1166. Jurisdictional defects.**

(a) Where it appears upon the face of the record that the judgment from which the appeal is taken was rendered without authority of law, the court below not having jurisdiction, the error is open to inquiry in the appellate court, and the judgment will be reversed, and a judgment of nol. pros. entered.—*Armstrong v. Hagerstown*, 32 Md. 54.

**§ 1167. Nature and form of remedy.**

**§ 1168. Premature decision.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

**§ 1169. Error as to grounds of decision.***Cross-Reference.*

Removal of executors, see "Executors and Administrators," § 35.

(a) Where a case is tried on agreed facts, and no stipulation is made authorizing judgment for either party, and the only error assigned was the refusal of instructions, which were properly refused, yet, where an affirmance would result in a judgment based on an unconstitutional statute, the case will be reversed, though there is no error in the rulings excepted to.—*Monticello Distilling Co. v. City of Baltimore*, 90 Md. 416, 45 Atl. 210.

(b) Where the state has sued on the bonds of a state treasurer, given by him, on entering on his first term of office, for defalcations occurring during that term, and has obtained a verdict in its favor, and the judgment thereon has been affirmed by the Court of Appeals, a rejection by the trial court, in the action on the first bond, of evidence offered by the state to show that the treasurer, during his second term, had converted to his own use certain state bonds, which offer was made to serve as the basis for an argument to show that other state bonds of the same group had been converted by the treasurer during his first term, forms no ground for remanding the cause to the court below for a new trial, the Court of Appeals having previously approved the ruling of the court below in respect to the rejection of this evidence.—*Archer v. State*, 74 Md. 410, 22 Atl. 737.

**§ 1170. Technical, formal, or trivial defects or errors.***Cross-Reference.*

Reversal ineffectual or not beneficial, see ante, § 1138.

*Annotation.*

Reversal of conviction because of unfair or irrelevant argument or statements of facts by prosecuting attorney.—46 L. R. A. 641, note.

(a) Code, art. 5, § 17, forbidding reversal if there is one good count, will not prevent the reversal of a judgment clearly based upon a bad count for unliquidated damages, in a declaration containing good counts for debt.—*Parks v. Griffith & Boyd Co.*, 117 Md. 494, 83 Atl. 559.

(b) In an action by the endorsee of a note before maturity, payable to the order of a company, against H. as an indorser, it appeared that the note was indorsed by M., treasurer, and by the defendant. The narr. alleged that the note was indorsed by such company, and issue was joined by one of the pleas on such allegation. *Held*, that the issue as to the indorsement by the company was immaterial, and that, even if the proof showed that the indorsement varied from the allegation, the judgment for the plaintiff would not be reversed, there being a proper issue in the case, and the jury being properly instructed on the law.—*Condon v. Pearce*, 43 Md. 83.

(c) The court will not grant a new trial for rulings of the court below upon immaterial matters, where the trial was fairly conducted, and the law of the case substantially applied.—*Bannon v. Warfield*, 42 Md. 22.

(d) A judgment will not be reversed for technical or formal errors which do not affect the merits.—*Cooper v. Utterbach*, 37 Md. 282.

(e) Overruling a plea cannot be a fatal error, where all the facts provable under it were provable with the same effect under another plea on which the case went to trial.—*Kent v. Holliday*, 17 Md. 387.

(f) A declaration vicious on account of an averment obscurely made is not such a fatal objection as will require the reversal of a judgment.—*Giles v. Perryman*, 1 H. & G. 164.

**§ 1171. Amount or extent of recovery.***Cross-References.*

Conclusiveness of verdict as to amount of damages, see ante, § 1004.

Modification of judgment as to amount, see ante, § 1151.

Remission of excess, see ante, § 1140.

(a) Under Code, art. 5, § 19, providing that no judgment shall be reversed in the Court of Appeals because the verdict was rendered for a larger sum than the amount laid in the declaration, a judgment will not be reversed because it is entered for a larger amount than was claimed.—*Marburg v. Marburg*, 26 Md. 8, 90 Am. Dec. 84.

(b) A case will not be remanded for a

new trial where the evidence shows that appellant is only entitled to nominal damages, though the judgment be reversed.—*Rawlings v. Adams*, 7 Md. 26.

### §1172. Reversal in part.

#### *Cross-References.*

As modification, see ante, § 1146.

Effect of liability on appeal bond, see post, § 1232.

Part affirmed on condition, see ante, § 1140.

Award of costs on reversal as to part of judgment or order, see "Costs," § 237.

Reversal unless costs are paid, see post, § 1174.

(a) Where petitioner in a proceeding before the orphans' court was entitled to file a replication, upon reversing an order dismissing the petition the order rejecting the replication will also be reversed, both orders being appealed from.—*Long v. Long*, 115 Md. 130, 80 Atl. 699, 848.

### §1173. Reversal as to one or more co-parties.

#### *Cross-References.*

Entry of judgment in trial court in favor of all on reversal in favor of one co-party, see post, § 1207.

New trial as to one or more co-parties, see post, § 1203.

Reversal as to all and remand for new trial as to part, see post, § 1178.

(a) Where a judgment has been erroneously rendered in favor of two defendants, who were sued jointly, the court cannot determine which defendant was liable and affirm the judgment as to the other, but must reverse it as to both and remand the case for a new trial.—*Walters v. Baltimore & O. R. R.*, 120 Md. 644, 88 Atl. 47.

(b) An order granting a new trial as to two defendants after judgment entered will not be treated as a judgment of a court of law which could not be reversed as to one and affirmed as to the other.—*Gross v. Wood*, 117 Md. 362, 83 Atl. 337; *Wood v. Rosenheim*, 117 Md. 362, 83 Atl. 341.

(c) Where defendants were jointly sued as original promisors, and the record failed to show that they raised the question of misjoinder of parties in the trial court, a judgment based on a single verdict in favor of all of the defendants could not be reversed, in so far as it affected some of them, and affirmed as to the others. (On motion

for rehearing.)—*East Baltimore Lumber Co. v. Knessett, Israel Aushe S'phard Congregation*, 100 Md. 125, 689, 59 Atl. 180, 62 Atl. 575.

(d) A judgment is regarded as an entire thing, and, being an entirety, it cannot be affirmed as to one or more defendants, and reversed as to others.—*Hanley v. Donoghue*, 59 Md. 239, 43 Am. Rep. 554.

### §1174. Conditional reversal.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### §1175. Rendering final judgment.

(a) On appeal, where the issue below was for the court, in reversing the judgment, the Court of Appeals will enter judgment in accordance with its decision.—*Warren Bros. Co. v. Kendrick & Roberts*, 113 Md. 603, 77 Atl. 847.

(b) When it is apparent that the amount recoverable is less than sufficient to maintain the jurisdiction of the court below, the cause will be reversed without awarding a procedendo.—*Kimberly v. Henderson*, 29 Md. 512.

(c) Where no benefit could accrue to the appellant from a dissent of the appellate court from the rulings of the court below on an immaterial point, the cause will not be remanded.—*Spear v. Griffin*, 23 Md. 418.

(cc) On appeal from an order striking out a judgment of condemnation against defendant in an attachment suit, if the defendant has obtained judgment in the short note case, the judgment appealed from may be reversed for error, but no procedendo will be awarded.—*Walters v. Munroe*, 17 Md. 501.

(d) Where, on appeal from an order dismissing a bill, the proceedings cannot be remanded for amendment, the decree will be reversed, and an order entered in the appellate court dismissing the bill without prejudice.—*McElderry v. Shipley*, 2 Md. 25, 56 Am. Dec. 703.

(e) Where it appears that, in every view of the facts disclosed, plaintiff has no right of action whatever, it is proper to reverse a judgment for him, without remanding the cause for new trial.—*Baltimore & H. Turn-*

pike Co. v. Barnes, 6 H. & J. 57; State v. Green, 4 G. & J. 381; Morgan v. Morgan, Id. 395; Berry v. Harper, Id. 467; Stockton v. Frey, 4 Gill 406, 45 Am. Dec. 138; Mudd v. Harper, 1 Md. 110, 54 Am. Dec. 644.

(f) The court will not issue a procedendo on reversal of a judgment, where they perceive, from written evidence, that the plaintiffs cannot ultimately recover.—Emery v. Owings, 6 Gill 191.

(g) Where the defendant excepted to the ruling of the court, the jury rendered a verdict for the plaintiff, the defendant moved in arrest of judgment, judgment was arrested, the plaintiff appealed, and the arrest of judgment was reversed on appeal, it was held that the appellate court should not render final judgment, but should remand the cause for judgment on the verdict, in order that the defendant might have the benefit of his exceptions.—O'Reilly v. Murdoch, 1 Gill 32.

(h) The appellate court, on reversing the granting of a motion in arrest of judgment, may enter final judgment where there is no error in the bill of exceptions.—Gordon v. Downey, 1 Gill 41.

(i) Where an additional amendment would not give to a writ a legal form, and in no event could the appellee be enabled to recover in the case if it were returned to the trial court, it will not be ordered returned.—Prather v. Manro, 11 G. & J. 261.

(j) Where the verdict was for the plaintiff, and upon the appeal of the defendant the court reversed the judgment of the county court, the granting of a procedendo depended entirely upon whether the plaintiff, from the facts disclosed by the record, could recover on the second trial, and where the cause of action was against a husband and wife, and the facts showed a cause of action against the husband alone, procedendo was not granted.—Berry v. Harper, 4 G. & J. 467.

(k) Where a defendant pleaded payment and limitations, on which pleas issues were joined, and the jury found for the plaintiff on the first issue and for the defendant on the second, the appellate court, having determined that the county court erred in receiving the plea of limitations, reversed the judgment which that court had rendered

for the defendant, and gave judgment for the plaintiff.—Wall v. Wall, 2 H. & G. 79.

(l) The Court of Appeals, having reversed a decree of the court of chancery, stated an account between the parties, and decreed accordingly; and also decreed that the chancellor make and pass all necessary orders for carrying that decree into effect.—Turner v. Bouchell, 3 H. & J. 99.

### § 1176. Directing judgment in lower court.

#### Cross-References.

Directing modification in lower court, see ante, § 1154.

Rendition and entry in lower court of judgment directed, see post, § 1207.

Grant of new trial as infringement of right to jury trial, see "Jury," § 37.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 1177. Necessity of new trial.

#### Cross-Reference.

Granting leave to amend, see post, § 1178.

(a) Where, in an action against several, the evidence was legally insufficient to authorize recovery against some, but sufficient as against one, judgment for all defendants must be reversed, and the cause remanded for a new trial.—Willner v. Silverman, 109 Md. 341, 71 Atl. 962.

(b) Though under Code, art. 5, § 36, where there were no exceptions in the court below to the evidence or to the sufficiency of the averments of the bill, the Court of Appeals may decree according to the proof, whether the allegata and probata correspond or not, yet when a bill by a divorced wife for restoration of property, purchased by her and conveyed to herself and husband as tenants by entireties, was filed, and evidence that plaintiff was coerced by defendant into having the conveyance so made was offered on the theory that the court was authorized under Code, art. 16, § 38, to restore the property to her, apart from any question of coercion, and the attention of her counsel was therefore not specially addressed to that feature of the case, it would be remanded so that the bill might be amended so as to allege fraud or undue influence and the parties have opportunity to offer evidence to that effect.—Reed v. Reed, 109 Md. 690, 72 Atl. 414.

(c) Where the regularity of the issuance of certain preferred stock was not questioned in the trial court, a petition asking the remanding of the cause for the trial of such issue on evidence subsequently discovered will be dismissed.—*Rogers v. Citizens' Nat. Bank*, 93 Md. 613, 49 Atl. 843.

(d) Where it does not appear upon what ground the jury have returned their verdict, and certain evidence has been excluded upon appeal, the judgment will be reversed, and procedendo awarded.—*Atwell v. Miller*, 6 Md. 10, 61 Am. Dec. 294.

(e) Upon a case stated, which does not authorize the court to give judgment for either party, the appellate court can give no judgment, but must reverse that of the court below, and remand the cause, although there be no other error in the proceedings.—*Burgess v. Pue*, 2 Gill 254.

(f) Where a cause is submitted upon a case stated, which only authorizes the court to decide a question, but does not confer authority to enter a judgment, the Court of Appeals will reverse the judgment, and remand the cause for further proceedings.—*Marine Bank of Baltimore v. Merchants' Bank of Baltimore*, 12 G. & J. 498.

### § 1178. Ordering new trial, and directing further proceedings in lower court.

#### *Cross-References.*

Remand without decision, see ante, § 1106. As final determination by state court reviewable by United States Supreme Court, see "Courts," § 393.

On appeal from decision of county board, see "Counties," § 58.

Proceedings for revocation of letters of administration, see "Executors and Administrators," § 32.

(a) Code, art. 5, § 22, which authorizes the Court of Appeals to grant new trials on reversing judgments in certain cases, does not authorize a new trial in an action against a taxi company for injury to a passenger, on reversal of judgment for plaintiff for inadvertence in proving defendant's ownership of the taxicab, where no negligence was established.—*Stewart Taxi Service Co. v. Getz*, 118 Md. 171, 84 Atl. 338.

(b) While the Court of Appeals will affirm a judgment against plaintiff where there is a substantial variance between pleading and

proof, yet, where there is evidence authorizing a recovery on proper amendment of the declaration, the cause will be remanded, with directions to award a new trial, in accordance with Code, art. 5, § 22.—*Lucke v. Clothing Cutters' & Trimmers' Assembly* No. 7,507, K. of L., 77 Md. 396, 26 Atl. 505, 39 Am. St. Rep. 421, 19 L. R. A. 408.

(c) Code, art. 5, § 22, which empowers the Court of Appeals to grant a new trial on affirming or reversing a judgment if "it shall appear to the court that a new trial ought to be had," does not authorize the Court of Appeals to revise or correct the verdict of a jury which has been allowed to stand by the trial court; and the question whether "a new trial ought to be had" must be determined according to the rules and principles of law, and from the record before the court at the time of the reversal or affirmance of the case under consideration.—*Archer v. State*, 74 Md. 410, 22 Atl. 737.

(d) Under Code, art. 5, § 22, providing for new trials, whether the judgment is affirmed or reversed, in cases where it is clear that a new trial ought to be had, a judgment for defendant will be reversed, and a new trial awarded, where plaintiff appears to have a good cause of action, but judgment was properly rendered against him on account of a defect in his declaration.—*Earnshaw v. Sun Mut. Aid. Soc.*, 68 Md. 465, 12 Atl. 884, 6 Am. St. Rep. 460.

(e) The appellate court, in reversing a decree declaring a party an insolvent, because such party was not properly summoned, will remand the case for a hearing where the debtor appeared after the adjudication of insolvency.—*Whyte v. Betts Mach. Co.*, 61 Md. 172.

(f) When the judgment of a superior court is reversed on appeal, and a new trial awarded, the case is entered up on the trial docket of the court below and is tried in the regular order, without any special notice previously given.—*Weber v. Fickey*, 52 Md. 500.

(g) Where an appeal is taken by the defendants from an order of the court below overruling a demurrer or plea to the bill, and requiring them to answer within 15 days, the Court of Appeals will not, in case

the demurrer or plea is held to have been properly overruled, pass a final decree against the appellant, without giving leave to answer.—*Trego v. Skinner*, 42 Md. 426.

(h) Under Code 1860, article 5, § 16, enacting that "in all cases where judgments shall be reversed or affirmed by the Court of Appeals, and it shall appear to the court that a new trial ought to be had, a writ of procedendo shall issue," the propriety of a new trial must appear from the record before the court at the time of the reversal or affirmance of the case under consideration.—*McCann v. Sloan*, 26 Md. 81. (See Code 1911, art. 5, § 22.)

(i) After the plaintiff had rested his case, the defendant prayed for an instruction to the jury that proof of a certain fact, concerning which the plaintiff had offered no evidence, was necessary to enable him to maintain the action. The instruction was given, and the defendant obtained a verdict without opening his case. *Held*, that where such instruction was erroneous, and the judgment reversed therefor by the Court of Appeals, such court would not, upon motion, give final judgment, but award a procedendo, under act 1826, c. 200, § 10, which authorizes the court, on any appeal or writ of error, "to give judgment, or award a writ of procedendo for a rehearing of the case, as shall appear to be just."—*Howard v. Carpenter*, 22 Md. 249. (See Code, art. 5, § 22.)

(j) On appeal from an order setting aside a judgment of condemnation in attachment ancillary to an action upon a note, procedendo will be awarded on reversal, where it does not appear that the principal case has been determined.—*Walters v. Munroe*, 17 Md. 501.

(k) Where a judgment in favor of the plaintiff is affirmed on the defendant's appeal, a procedendo will not be issued in order to enable the defendant to avail himself of evidence which he might have produced at the trial, but did not. Acts 1826, c. 200, § 10, and Acts 1830, c. 186, give no power to this court to order a procedendo in such a case.—*McKee v. McKee*, 16 Md. 516. (See Code, art. 5, § 22.)

(l) In an insurance case judgment for the plaintiff was reversed because the evidence admitted to prove the preliminary proof of loss was inadmissible, and it was *held* that the plaintiff, the appellee, might move for a procedendo at any time during the term, if he had any other proof.—*Spring Garden Mut. Ins. Co. v. Evans*, 15 Md. 54, 74 Am. Dec. 555.

(m) Under act 1830, c. 186 (Code, art. 5, § 22), a procedendo in case of an appeal by the plaintiff, when the judgment is affirmed, cannot be granted, if "the judgment of the Court of Appeals would be a bar to a new action brought upon the same cause."—*Farmers' Bank of Maryland v. Bowie*, 4 Md. 290.

(n) The court being of opinion that the substantial merits of the case were not determined by the affirmance of the judgment of the court below, the cause was remanded with a procedendo, under act 1830, c. 186. (Code, art. 5, § 22.)—*Beall v. Beall*, 7 Gill 233.

(o) Where a bill for injunction states no proper case, but it appears that the complainant may have relief by amendment, the appellate court will, after dissolving the injunction, remand the cause for amendment and further proceedings.—*Brawner v. Franklin*, 4 Gill 463.

(p) Under the act of 1830, c. 186 (Code, art. 5, § 22), where the judgment of the county court, affirmed by the Court of Appeals, would not be a bar to another action by the same plaintiff against the same defendant, by reason of a variance, which the plaintiff might cure by amendment, if permitted, so that justice might be done, the Court of Appeals will grant a new trial.—*Parker v. Sedwick*, 4 Gill 318.

(q) On reversal of a decree adjudging that a discharge of a debtor in insolvency was invalid, the Court of Appeals may award a procedendo to the court below to try the question whether the debtor had subsequently acquired property within the exceptions of the act of 1805, c. 110.—*Bowie v. Jones*, 1 Gill 208.

(r) Where the Court of Appeals is not satisfied that it has all the proof before it to do full justice between all the parties, it will not render a final decree.—*Oliver v. Palmer*, 11 G. & J. 426.

(s) Where judgment on a demurrer to a plea in bar was reversed for defects in the declaration, final judgment was not rendered, but a procedendo was awarded to rehear the cause, the plaintiff having obtained judgment below upon issues joined on other pleas in bar.—*Dorsey v. State*, 4 G. & J. 471.

(t) Where a declaration contains a count for matters and articles properly chargeable in account, and no account is filed, and another count for special services, which did not state an assumption of any particular sum, and the evidence contained in the bill of exceptions showed that the plaintiff had some claim, and the verdict and judgment were for him, the appellate court, on reversing the judgment, will award a procedendo.—*Turner v. Jenkins*, 1 H. & G. 161.

(u) The Court of Appeals having reversed a judgment of the court below on the form of proceedings (there being a material variance between the writ and the declaration) refused to remit the record with a procedendo.—*Davis v. Wilson*, 2 H. & J. 345.

(v) Where the Court of Appeals concur in opinion with the court below, as expressed in the bill of exceptions, but reverse the judgment on the form of proceedings, they award a procedendo.—*Smith v. Gorton*, 2 H. & J. 367.

### § 1179. Compelling or directing restitution.

#### *Cross-References.*

On modification of judgment, see ante, § 1155.

Right to restitution and enforcement thereof after remand, see post, § 1208.

Estoppel of administrator to assert right to restitution, see "Executors and Administrators," § 114.

In action for sale of real estate to pay debts of decedent, see "Executors and Administrators," § 356.

On reversal of decree of distribution of decedent's estate, see "Executors and Administrators," § 317.

Restitution on reversal of judgment in ejectment, see "Ejectment," § 122.

(a) Where a judgment was reversed by the Court of Appeals on the ground that the court rendering it had no jurisdiction of the case, a writ of restitution granted by the clerk of the Court of Appeals was void for want of a judgment in the Court of Appeals on which it could be founded.—*Mears v. Remare*, 34 Md. 333.

(b) Where a bill to set aside a deed by a lunatic alleges that no, or, if any, an inadequate, consideration was paid, and a decree was taken pro confesso, there is no presumption that anything was paid; and defendant, on appeal, has no right to a reversal of the decree to enable him to claim reimbursement.—*Wampler v. Wolfinger*, 13 Md. 337.

### § 1180. Effect of reversal.

#### *Cross-References.*

Relief to parties not appealing, see ante, § 1119.

Reversal as to one or more co-parties, see ante, § 1173.

As displacing lien on railroad property, see "Railroads," § 161.

In respect to deposit in court withdrawn pending appeal, see "Deposits in Court," § 11.

Of judgment constituting basis of suit to subject property fraudulently conveyed, see "Fraudulent Conveyances," § 241.

On conclusiveness of judgment, see "Judgment," § 664.

On judgment as bar to another action, see "Judgment," § 581.

On rights of assignee of judgment against assignor, see "Judgment," § 849.

On title of purchaser at execution sale, see "Execution," § 276.

On title of purchaser at sale on foreclosure of mortgage, see "Mortgages," § 539.

On title of purchasers at judicial sales in general, see "Judicial Sales," § 54.

Purchasers pendente lite, see "Lis Pendens," § 11.

Recovery of payments on unreversed judgment, see "Payment," § 82.

Reversal of order as bar to renewal of motion, see "Motions," § 42.

Liability to refund, see post, § 1208.

(a) Although a procedendo will not be granted where the Court of Appeals can see that the plaintiff must fail in his action, it does not follow that the granting of such writ implies that he must ultimately succeed.—*Hammond v. Inloes*, 4 Md. 188. [Cited and annotated in 34 L. R. A. 331, on conclusiveness of prior decisions on subsequent appeals.]



**(E) RENDITION, FORM, AND ENTRY OF JUDGMENT.***Cross-References.*

Effect of granting rehearing, see ante, § 834.

Judgment against sureties in bonds or undertakings, see post, § 1236.

Criminal prosecutions, see "Criminal Law," § 1191.

§ 1181. Time and mode of rendition.

§ 1182. Form and requisites.

§ 1183. Entry and record.

§ 1184. Entry nunc pro tunc.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 1185. Amendment, modification, or setting aside.

*Cross-Reference.*

After remand, see post, § 1221.

(a) When the Court of Appeals has entered a final decree affirming a decree of an inferior court, it will not, upon motion, reopen the decree, and remand the cause, when it appears to the court that the purposes of justice would not be advanced thereby, nor the complainant entitled to relief under an amended bill.—*Paine v. France*, 26 Md. 46.

(b) After a decree has been enrolled, the Court of Appeals will not entertain an application to vary it, except upon the consent of all the parties, or in respect of matters which are of course; but there can be no doubt of the power of the court to correct a manifest clerical error in its decree, and in making such a correction it is unnecessary to pass a new order or decree, but the original will be brought before the court, and by the clerk, in the presence of the parties, corrected.—*Lovejoy v. Irelan*, 19 Md. 56.

(c) A clerk cannot strike out a judgment, and reinstate the cause upon the docket, without order of the court, though specially directed to do so by statute.—*Prout v. Berry*, 12 G. & J. 285.

(d) Where the appellate court had reversed a judgment, and awarded a procedendo, and it afterwards, during the same term, appeared that there was a material mistake in the record upon which they acted, they struck out the judgment, etc., and ordered a writ of diminution.—*Raborg v. Bank of Columbia*, 1 H. & G. 231.

**(F) MANDATE AND PROCEEDINGS IN LOWER COURT.***Cross-References.*

Remand without decision, see ante, § 1106.

Review of proceedings in lower court, see ante, § 118.

Appeals from justices' courts, see "Justices of the Peace," § 190.

Award of costs on judgment after remand, see "Costs," § 55.

Criminal prosecutions, see "Criminal Law," § 1192.

In disbarment proceedings, see "Attorney and Client," § 57.

In suits for divorce, see "Divorce," § 186.

Mandamus to compel obedience to mandate, see "Mandamus," § 4.

Necessity of filing opinion on reversal without remand, see "Courts," § 105.

On review by United States Supreme Court of decision of state court, see "Courts," § 400.

Probate proceedings, see "Wills," § 392.

§ 1186. Mandate, remittitur, or order of remand.

*Cross-References.*

Amendment or correction, see post, § 1222.

Recall or return of cause from lower court, see post, § 1218.

Award of costs in mandate, see "Costs," § 244.

§ 1187.—Necessity.

§ 1188.—Making and issuance.

*Cross-Reference.*

Time for transmission and filing in lower court, see post, § 1191.

§ 1189.—Payment of fees or costs.

§ 1190.—Form and requisites.

§ 1191.—Transmission and filing in lower court.

*Cross-Reference.*

Time for issuance, see ante, § 1188.

§ 1192.—Operation and effect.

*Cross-Reference.*

Failure to obey mandate or follow decision, see post, § 1216.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 1193. Effect in lower court of decision of appellate court.

§ 1194.—Construction and operation in general.

*Cross-Reference.*

Scope of decision in general, see ante, §§ 1110-1114.

(a) In a suit in equity, plaintiff in his prayer for relief asked to have defendant enjoined from disposing of realty described,

and the court ordered that an injunction be issued as prayed. The injunction as issued by the clerk made no mention of the realty, and the complaint was subsequently dismissed. On an appeal from the order dismissing the complaint the appellate court directed that an injunction as originally granted should be issued. *Held*, that a writ embracing the realty should issue in compliance with that order, and that the writ as originally issued by the clerk should not be followed.—*Smith v. Lord*, 111 Md. 500, 75 Atl. 109.

(b) Though an appeal will not lie from the determination of a mere question of costs, yet, if the order appealed from is reversed upon other grounds, the question of costs is necessarily opened, to be disposed of by final order.—*Columbian Bldg. Ass'n v. Crump*, 42 Md. 192.

(c) A decision of the appellate court in a cause, though erroneous, is binding on the court below on a second trial of the cause.—*Mong v. Bell*, 7 Gill 244; *McClellan v. Crook*, Id. 333; *Young v. Frost*, 1 Md. 377; *Williams v. Savage Mfg. Co.*, 3 Md. Ch. 418; *Emory v. Owings*, 3 Md. 178; *Dennis v. Dennis*, 15 Md. 73; *Thomson v. Albert*, Id. 268; *Williams v. Banks*, 19 Md. 22; *Cumberland Coal & Iron Co. v. Sherman*, 20 Md. 117; *Waters v. Waters*, 28 Md. 11; *Worthington v. Hiss*, 75 Md. XII, unreported, 23 Atl. 198. [*Cited and annotated in 34 L. R. A.* 322, 326, 330, 337, on conclusiveness of prior decisions on subsequent appeals.]

(d) After an appeal bond had been filed upon appeal from an order granting an injunction upon the sale of certain property by an administrator and appointing receivers, an order was passed directing the receivers to deliver the property back to the administrator. *Held*, that the affirmance of the order appointing receivers operated as a revocation of the order for the delivery of the property.—*Everett v. State*, 28 Md. 190.

(e) When a cause is remanded, without a reversal or affirmance, it stands below as if no decree or appeal therefrom had been had.—*Dennis v. Dennis*, 15 Md. 73.

(f) In a trial under a procedendo, no error can be imputed to the rulings of the court below, based on the terms of a contract and

a modification thereof as interpreted by the appellate court on the first appeal.—*Baltimore & O. R. Co. v. Resley*, 14 Md. 424.

(g) The appellate court having on the first appeal reversed the judgment because of the rejection of certain prayers, in which they said they "saw no defect," and these prayers having submitted to the jury the question of bona fides in making certain estimates, it must be intended that the court thought there was evidence on that question proper for the jury.—*Baltimore & O. R. Co. v. Resley*, 14 Md. 424.

(h) Where the appellate court determines the amount due on a mortgage, and remands the case to the chancellor for a sale, the chancellor has no power to allow credits not embraced in the amount found due by the appellate court.—*McClellan v. Crook*, 7 Gill 333.

#### § 1195.—As law of the case.

##### *Cross-References.*

On subsequent appeal, see ante, §§ 1097-1099.

Rulings below as law of the case on appeal, see ante, § 853.

Previous decision in the same case as law of the case in general, see "Courts," § 99.

(a) Instructions held erroneous, although following the language of the appellate court on a former appeal, in view of additional evidence on the second trial.—*Meyer v. Frenkil*, 116 Md. 411, 82 Atl. 208.

(b) A decree of the Court of Appeals, providing that the fund in the hands of the receiver of an insolvent corporation is applicable solely to the payment of the claims of those who shall have duly filed and proven their claims on or before the date prescribed, operates as a bar to those who did not comply with such requirement.—*Abraham v. Mercantile Trust & Deposit Co.*, 86 Md. 254, 37 Atl. 646.

(c) A decree of the Court of Appeals, fixing the time within which claims against an insolvent corporation may be filed with the receiver, and directing the distribution of the fund in his hands in payment of claims so filed, becomes the law of the case, conclusive on all parties in the subsequent stages of the proceeding.—*Abraham v. Mercantile Trust & Deposit Co.*, 86 Md. 254, 37 Atl. 646.

(d) A rule enunciated in a given case is the law of that case, though it has been repudiated in similar cases.—*Thomson v. Albert*, 15 Md. 268. [Cited and annotated in 34 L. R. A. 328, on conclusiveness of prior decisions on subsequent appeals.]

**§ 1196. Powers and duties of lower court.**

**§ 1197.— Jurisdiction of lower court after remand.**

(a) Upon a former appeal in this case, the court passed a decree reversing a decree of the chancellor, and remanding the cause to the court of chancery, with directions to sell the mortgaged premises, according to the usual course in such cases, unless the appellant should pay into that court the sum ascertained, by an audit directed to be made in the appellate court, to be due the appellee. *Held*, that this was a final decree, disposing of the entire subject in controversy upon the pleadings and proofs exhibited, and the only authority remaining to the chancellor over the subject was to carry that decree into execution, and that he was necessarily confined to the limits prescribed to him, whatever further or ulterior equity might have arisen in favor of the appellant after the passing of the original decree by the chancellor.—*McClellan v. Crook*, 7 Gill 333.

**§ 1198.— Compliance with mandate or directions.**

(a) On appeal in a proceeding to construe a trust deed and will executing a power of appointment conferred in the deed, and to set aside proceedings in the orphans' court adjudicating the ownership of certain bonds passing under the will, the Court of Appeals decided that, as between plaintiff and two children to whom the bonds were adjudicated below, plaintiff was entitled to them and entitled to have the fund in which they were invested paid over to him absolutely, and remanded the case for the trial court to carry out its decree. The bonds were sought to be attached by plaintiff's creditors, and, on remand, the circuit court adjudged that pending the attachment cases the bonds would not be ordered to be delivered to garnishee until further order without prejudice. *Held*, that the trial court's

action was not contrary to the mandate of the Court of Appeals.—*De Galard De Bras-sac v. Winans*, 115 Md. 604, 80 Atl. 1071.

**§ 1199.— Opening, vacating, modification, or amendment of judgment or order.**

*Cross-Reference.*

By appellate court after remand, see post, § 1221.

(a) The lower court cannot, upon the same facts, alter the decree of the appellate court.—*Crapster v. Griffith*, 2 Bland 5.

**§ 1200.— Errors in decision of appellate court.**

*Cross-Reference.*

See ante, § 1194.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 1201.— Amendments as to pleadings and parties.**

*Cross-Reference.*

Granting leave to amend on reversal, see ante, § 1178.

(a) After reversal of an order overruling a demurrer to a bill for failure to file an exhibit, an amended bill accompanied by what was alleged to be a copy of such exhibit with proof of the loss of the original *held* not insufficient as not complying with the mandate.—*Washington County Water Co. v. Mayor and Council of Hagerstown*, 122 Md. 252, 89 Atl. 500.

(b) Under a decree of the appellate court remanding the cause and ordering another person to be made a party defendant, the lower court may change the issues or add others, if such be found necessary.—*Marriott v. Handy*, 8 Gill 31.

(c) Where the lower court is in possession of a case under a procedendo, it can entirely change the issues and make a new case, notwithstanding the words of the writ directing the court to proceed in the cause as if no trial had taken place or appeal been prosecuted.—*Marriott v. Handy*, 8 Gill 31.

**§ 1202.— Granting new trial or rehearing.**

*Cross-Reference.*

Effect of decision of appellate court as granting, see post, § 1210.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 1203. Proceedings after remand.***Cross-References.*

Right to jury trial on remand as affected by waiver at former trial, see "Jury," § 28.

For entry of judgment of appellate court, see post, § 1207.

Time for new trial, see post, § 1211.

(a) In a suit by creditors to set aside an assignment by their debtor, plaintiff's counsel cannot, without leave of court, after the case has been remanded on an appeal from an order sustaining a demurrer to the bill, and the demurrer to the bill has been overruled, dismiss the action as to certain plaintiffs and as to attaching creditors brought in on plaintiff's petition.—*Riley v. First Nat. Bank*, 81 Md. 14, 31 Atl. 585.

(b) Code, art. 5, § 23, providing for the remand to another county of a cause in which the Court of Appeals reversed the judgment below, on showing that a fair and impartial trial cannot be had in the county where the judgment was rendered, is not applicable where the right of removal has been once exercised; and an application for remand, under that section, by the party at whose instance the removal was had, will be refused.—*State v. Baltimore & O. R. Co.*, 69 Md. 339, 14 Atl. 688.

(c) Where property is sold by a trustee under a power to sell contained in the deed of trust, and the sale is set aside by the Court of Appeals on the ground that the property was not sufficiently described or designated in the public notice of sale by the trustee, and the cause is remanded in order that the property may be resold, and the necessary steps taken in the court below for that purpose, in conformity with the opinion of the appellate court, the trustee may proceed to resell the property without an order of the circuit court directing such sale.—*Reeside v. Peter*, 35 Md. 221.

(d) A writ of mandamus was awarded to admit a party to a public office. On appeal the order was reversed, on the ground that the governor's certificate, then filed, did not show that the applicant had subscribed the oaths of office, and the appellate court sent the case back on a procedendo. A certificate afterwards was filed to supply this defect, as appeared of record in the court be-

low, and then that court awarded the mandamus. *Held*, that in the proceeding under this procedendo, it was not necessary for the applicant to commence de novo nor to amend the old petition and obtain a rule to show cause, if the original application contained sufficient allegations, when taken in connection with the governors' certificate to show that the oaths of office had been legally taken and subscribed.—*Harwood v. Marshall*, 10 Md. 451.

(e) Land was sold under a decree made in 1848. The order confirming the sale was appealed from, and was affirmed June, 1850. The auditor calculated interest on the claim up to the date of the sale, and interest on the aggregate amount to the date of the affirmation of the order. *Held*, that the right of the creditor to such interest could not be prejudiced by the appeal by the debtor, and the filing of the appeal bond.—*Barnum v. Raborg*, 2 Md. Ch. 516.

**§ 1204. Enforcement of judgment or order affirmed.****§ 1205. Interest on judgment affirmed.****§ 1206. Enforcement of judgment of appellate court.***Cross-Reference.*

See ante, § 1203.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 1207. Rendition and entry of judgment or order as directed.**

(a) In an action to recover a trust fund improperly diverted, with interest, where the Court of Appeals held defendants liable for the amount received without discussion of the question of interest, the circuit court *held* to have properly entered a decree for such amount with interest only from the date of the decree.—*Carrington v. Thomas C. Basshor Co.*, 119 Md. 378, 86 Atl. 1030.

(b) Where, in a suit relating to the distribution of a fund, the court awarded costs in the sum of \$1,569, which was reduced by the final decree to \$1,477, and an appeal was taken and reversed on two issues, nothing being said as to the award of costs, the court on remand of the case is not entitled to change the reduced costs to the original amount.—*De Bearn v. Winans*, 119 Md. 390, 86 Atl. 1044.

(c) A decree permitting railroad bonds to be attached and condemned *held* erroneous where it permitted the attachment and condemnation of the bonds at once and did not provide that cancellation and change of registration be had as provided by a former decree.—*De Bearn v. Winans*, 119 Md. 390, 86 Atl. 1044.

(d) A decision of the Court of Appeals that complainant, who sued for the construction of a deed of trust and of a will executing a power of appointment conferred by the deed, was entitled to a decree setting aside the distribution in the orphans' court of the trust fund, whereby he had received one-third thereof absolutely and two-thirds as guardian for his infant children, and to a decree awarding to him the entire fund absolutely and remanding the case with directions, does not prevent the trial court from inserting in the decree a provision protecting a surety on complainant's bond as guardian for his children, pursuant to an agreement between complainant and surety, the surety not being a party to the cause.—*De Galard De Brassac v. Winans*, 115 Md. 139, 80 Atl. 730.

(e) Where the question of compensation to an attorney, representing infants in a suit involving their rights to a fund under a deed of trust and a will executing a power of appointment, conferred by the deed, was not raised when the Court of Appeals determined on appeal the rights of the parties, the circuit court, on the remand of the case, possessed authority to fix the attorney's compensation payable out of the fund in controversy.—*De Galard De Brassac v. Winans*, 115 Md. 139, 80 Atl. 730.

(f) A decision of the Court of Appeals which declares the absolute right of property in bonds to be in complainant, but which does not direct when they shall be restored to him, does not prevent the trial court, after remand, from qualifying complainant's right to a restoration of the bonds by providing that they shall be restored to him at the proper time, the bonds having been attached by creditors of complainant, and the attachment proceedings being undisposed of.—*De Galard De Brassac v. Winans*, 115 Md. 139, 80 Atl. 730.

(g) Where the Court of Appeals adjudged that bonds registered in the names of infant children of complainant belonged absolutely to complainant, and remanded the case with directions for a decree in conformity with the decision, the trial court, in entering a decree, must direct the cancellation of the registration of the bonds, but should further provide that such cancellation should not affect the rights of any attaching creditor of complainant.—*De Galard De Brassac v. Winans*, 115 Md. 139, 80 Atl. 730.

(h) Where, on appeal from a decree dismissing a bill for an accounting, it was held that the plaintiff was entitled to recover \$29,000, and the cause was remanded to the lower court for further proceedings in conformity with the opinion of the Court of Appeals, a decree for the plaintiff for \$29,000 constituted further proceedings in conformity with the opinion of the Court of Appeals, though Code, art. 5, § 36, authorizes the Court of Appeals to pass a final and effective decree without remanding the cause.—*Safe Deposit & Trust Co. of Baltimore v. Gittings*, 102 Md. 456, 62 Atl. 1033; *Gittings v. Safe Deposit & Trust Co. of Baltimore*, Id.

#### § 1208. Making or compelling restitution.

##### *Cross-References.*

Compelling or directing restitution by appellate court on reversal, see ante, § 1179.

Compelling restitution by purchaser at sale to enforce vendor's lien, see "Vendor and Purchaser," § 288.

(a) In an action for money had and received to recover back money paid under a decree which was subsequently reversed, it appeared that the decree was against the plaintiff's testator, and that the plaintiff claimed and obtained a credit for such payment in his accounts in the orphans' court, and that the defendant at law, who was the complainant in chancery, was a creditor of the plaintiff's testator. *Held*, that the plaintiff should not be permitted to recover the whole sum paid by him under the decree, though the accounts in the orphans' court, settled by him, showed a large overpayment; but that it should be left to the jury to determine from the evidence what amount

of the assets of the estate of the plaintiff's testator were applicable to the defendant's claim against his testator.—*Owings v. Owings*, 10 G. & J. 267.

(b) Money paid on a judgment that is afterwards reversed or vacated, may be recovered back in *assumpsit*.—*Green v. Stone*, 1 H. & J. 405.

(c) If money be paid on a judgment afterwards reversed it may be recovered back in an action for money had and received, unless it was equitably due at the time of such judgment or payment; and such action will not be at all affected by the proceedings in the original action.—*Green v. Stone*, 1 H. & J. 405.

### § 1209. New trial.

#### *Cross-References.*

Effect of granting rehearing, see *ante*, § 834.

New or amended pleadings, see *ante*, § 1201.

Parties as to whom new trial may be had, see *ante*, § 1203.

Power of trial court to grant, see *ante*, § 1202.

Proceedings at new trial granted on motion in lower court, see "New Trial," §§ 169-175.

### § 1210.— In general.

### § 1211.— Preliminary proceedings.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 1212.— Scope of issues.

(a) It is too late to plead the statute of limitations to a claim for the first time after it has been passed upon by the Court of Appeals, and the cause remanded.—*Williams v. Banks*, 19 Md. 22.

(b) Where a case is remanded, and a *procedendo* is awarded, the court below, when in possession of the case, can change entirely the issues, may make a new case, can convert an action of slander into an action of trover, or on a promissory note, and by so doing no disobedience is shown to the superior court.—*Marriott v. Handy*, 8 Gill 31.

(c) A judgment of the appellate court ordering a new trial opens anew all the questions in the case, and makes them *res integra*.—*Gordon v. Downey*, 1 Gill 41.

### § 1213.— Conduct of trial.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 1214.— Evidence.

(a) One of the defendant's counsel being on the stand, a copy of the laws of one of the defendant's affiliated associations, which had paid to the defendant's \$250 on account of the death of the member, was shown him, and he admitted that he produced it in answer to a subpoena duces tecum, and that at a former trial of the case the book was by him admitted as evidence. *Held*, that the witness' admission that at a former trial he had admitted the book as evidence rendered it admissible on the subsequent trial, notwithstanding his testimony that he could not say whether it was a copy of the laws.—*Wells & McComas Council, No. 14, Junior Order United American Mechanics v. Littleton*, 100 Md. 416, 60 Atl. 22.

### § 1215.— Instructions to jury.

### § 1216. Failure to obey mandate or follow decision of appellate court.

#### *Cross-Reference.*

Mandamus to compel obedience, see "Mandamus," § 58.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### (G) JURISDICTION AND PROCEEDINGS OF APPELLATE COURT AFTER REMAND.

#### *Cross-References.*

Powers and proceedings of lower court after remand, see *ante*, §§ 1197-1208, 1210-1216.

Criminal prosecutions, see "Criminal Law," § 1193.

Judicial notice by appellate court of former reversal and remand, see "Criminal Law," § 304.

### § 1217. Transfer of jurisdiction in general.

### § 1218. Recall or return of cause from lower court.

### § 1219. Rehearing after remand.

#### *Cross-Reference.*

Recall of remittitur for rehearing, see *ante*, § 1218.

### § 1220. Allowance of further appeal.

**§ 1221. Amendment or modification of judgment.**

*Cross-Reference.*

Recall of remittitur for correction of judgment, see ante, § 1218.

**§ 1222. Amendment or correction of mandate or remittitur.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**XVIII. LIABILITIES ON BONDS AND UNDERTAKINGS.**

*Cross-References.*

Necessity and requisites of security, see ante, §§ 373, 374, 376, 377, 379-395, 463-475.

Writ of error operating as supersedeas preventing enforcement of appeal bond, see ante, § 485.

Actionable deceit in procuring signature of plaintiff to appeal bond, see "Fraud," § 27.

Bastardy proceedings, see "Bastards," § 92.

Bonds on appeal in summary proceedings to recover possession of leased premises, see "Landlord and Tenant," § 315.

In action of forcible entry and detainer, see "Forcible Entry and Detainer," § 43.

In admiralty, see "Admiralty," § 120.

In election contests, see "Elections," § 305.

In insolvency proceedings, see "Insolvency," § 184.

On appeal from justices' courts, see "Justices of the Peace," § 191.

On appeal in criminal prosecutions, see "Criminal Law," §§ 1194-1199.

On appeal in replevin, see "Replevin," § 121.

Recovery on bond as assets of decedent's estate, see "Executors and Administrators," § 49.

Subrogation of sureties on appeal bonds, see "Subrogation," § 7.

**§ 1223. Nature of obligation.**

(a) Courts of chancery have power to take an appeal bond upon appeal, though not expressly authorized by statute, and liability attaches on such bond.—Fullerton v. Miller, 22 Md. 1.

**§ 1224. Unnecessary or excessive bond or undertaking.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 1225. Insufficient, informal, or defective bond or undertaking.**

(a) In an action on an appeal bond, if the bond has not been legally approved, that

fact may be availed of at the trial by way of defense.—Keen v. Whittington, 40 Md. 489.

(b) In a suit upon an appeal bond conditioned to prosecute an appeal at the county court of Anne Arundel county next succeeding the date of the bond, it appearing that there was no such court in existence at that time, it was held that no recovery could be had.—Tucker v. State, 11 Md. 322.

**§ 1226. Void or defective appeal or other proceeding.**

**§ 1227. Discharge of sureties.**

*Cross-References.*

Bond on appeal from justices' court, see "Justices of the Peace," § 191.

By alteration of instrument, see "Principal and Surety," § 101.

By death of principal, see "Principal and Surety," § 91.

Discharge of principal in bankruptcy proceedings, see "Bankruptcy," § 431.

Discharge of surety by extension of time for payment or performance, see "Principal and Surety," § 104.

Discharge of surety in bankruptcy, see "Bankruptcy," § 421.

Failure to present claim to estate of principal as discharge of surety, see "Principal and Surety," § 125.

**§ 1228. Accrual or release of liability by breach or fulfillment of conditions.**

**§ 1229.—In general.**

**§ 1230.—Failure to prosecute appeal or other remedy.**

**§ 1231.—Dismissal, quashing, or vacation of proceeding.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 1232.—Affirmance or reversal of judgment or order.**

(a) When an appeal bond is conditioned that, if appellant shall "prosecute his appeal with effect," etc., the condition is broken if judgment is affirmed.—Karthaus v. Owings, 6 H. & J. 134.

**§ 1233. Liabilities on successive appeals.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 1234. Extent of liability.**

(a) On an accounting of certain trustees, the court allowed them certain commissions,

and to plaintiff's intestate, for services rendered to the trustees, the sum of \$10,000, instead of \$12,500 claimed. Certain creditors of the estate appealed, and a cross-appeal was taken on behalf of plaintiff's intestate, because of the reduction of intestate's claim, such creditors executing a bond to pay, in case such parts of the order should be affirmed, all damages and costs decreed by the circuit court, and all damages awarded by the Court of Appeals. The court on appeal further reduced all the allowances appealed from, with the exception of that allowed to plaintiff's intestate, which was affirmed, without any provision relating to interest or other allowance. *Held*, that intestate's administrator was not entitled to recover on the appeal bond interest on the allowance for the time that it was unpaid by reason of the appeal.—*Marshall v. Dobler*, 97 Md. 555, 55 Atl. 704.

(b) Where the appeal has not been prosecuted, and the judgment not affirmed, the rule of damages will depend upon the injury sustained by reason of the stay of execution on the judgment appealed from.—*Keen v. Whittington*, 40 Md. 489.

(c) Where an appeal is taken from a decree of foreclosure and the decree is affirmed, if it appears that at the date of the appeal the property would have sold for a greater sum than it afterwards brought, plaintiff may recover the difference on the appeal bond.—*Jenkins v. Hay*, 28 Md. 547.

(d) An appeal was taken from a decree of foreclosure. The decree was subsequently affirmed, with costs. *Held*, that appellee may recover, on the bond, interest on the proceeds of the sale applicable to his claim from the time the decree was passed to the time of its affirmance.—*Jenkins v. Hay*, 28 Md. 547.

(e) An appeal bond executed by a complainant upon appeal from an order of the circuit court dissolving an injunction by which the respondent was restrained from negotiating or collecting certain notes contained the following condition: "To prosecute the said appeal with effect, and, in case the order dissolving the said injunction shall be affirmed, to satisfy and pay, all and

singular, the damages, charges, and costs decreed by the circuit court, as also all costs and damages that shall be awarded by the Court of Appeals." *Held*, that damages for the injury sustained by the respondent through the delay occasioned by the appeal could not be recovered in an action upon the bond against the surety thereon, where costs only had been awarded in the original suit by the two courts aforesaid.—*Fullerton v. Miller*, 22 Md. 1.

(f) When the court orders a sale of real property, retaining an equitable lien for the price, and the purchaser appeals from a subsequent order affirming the sale and ordering him to pay the price, the sureties on his appeal bond are liable to the court for the purchase price; the condition of the bond being to prosecute the appeal with effect, or pay the amount ordered.—*Andrews v. Scotten*, 2 Bland 629.

(g) An appeal by the representatives of a mortgagor from a decree against them in favor of the mortgagee for the sale of the mortgaged premises unless the debt secured should be paid by a given day, and an appeal bond given by them to suspend execution of such decree, do not compel those representatives to guaranty the adequacy of the fund pledged by their ancestor, on an affirmance of the decree.—*Wood v. Fulton*, 2 H. & G. 71.

#### § 1235. Payment and distribution among persons entitled.

#### § 1236. Judgment against sureties in appellate court.

#### § 1237. Summary remedies.

#### § 1238. Actions.

##### *Cross-References.*

Action by executor in personal or representative capacity, see "Executors and Administrators," § 427.

Actions on bonds given in appeal from justices' courts, see "Justices of the Peace," § 191.

#### § 1239.—Right of action and form of remedy.

##### *Cross-Reference.*

Acceptance of assignment of judgment as affecting right of action on appeal bond, see "Assignments," § 56.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.



### § 1240.— Conditions precedent.

(a) Where a decree is passed for the sale of real estate to satisfy a mortgage thereon, and confirmed upon appeal, with costs to the appellee, and the sale is then made and ratified, an action against a surety upon the appeal bond may be maintained, although the auditor's account distributing the proceeds of the sale has not been finally ratified.—*Jenkins v. Hay*, 28 Md. 547.

### § 1241.— Defenses.

#### *Cross-References.*

Estoppel to plead defense, see "Estoppel," §§ 18, 22, 32.

To actions on appeal bonds given in justices' courts, see "Justices of the Peace," § 191.

### § 1242.— Jurisdiction and venue.

#### *Cross-Reference.*

Removal of cause from state to federal court, see "Removal of Causes," § 19.

### § 1243.— Time to sue, and limitations.

#### *Cross-References.*

Accrual of right of action, see "Limitation of Actions," §§ 47, 48.

Application of general statute of limitation, see "Limitation of Actions," §§ 22, 24, 25, 106.

### § 1244.— Parties.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 1245.— Pleading.

(a) In an action on an appeal bond, the approval of the bond need not be expressly alleged. As the filing of the bond would be nugatory unless it was first approved, its approval may be inferred from the fact of its being filed.—*Keen v. Whittington*, 40 Md. 489.

(b) Where the defense in an action on an appeal bond conditioned that "said judgment should be affirmed" was an alleged misdescription of defendant's name, and the bond was brought into court by proferret and oyer, and in terms professed to be the corporate act of the principal obligor, and was executed under its corporate seal, *held*, that this supplied the failure to aver such incorporation in the declaration.—*Keen v. Whittington*, 40 Md. 489.

(c) An action on an appeal bond, where

the appeal has been dismissed, and the bond is not in any certain amount of penalty, is not a "suit on a contract," in which an affidavit of the "true amount" of indebtedness may be filed within the provisions of the speedy judgment acts.—*Keen v. Whittington*, 40 Md. 489.

(d) In an action on an appeal bond, where the declaration assigns the breaches, a plea of non damnificatus is bad.—*Jenkins v. Hay*, 28 Md. 547.

(e) In an action on a writ of error bond, which recites a judgment against the obligors, it is no variance to produce in evidence a judgment for such sum, but with interest, provided the judgment be otherwise identified as the one recited in the bond.—*Frantz v. Smith*, 5 Gill 280.

(f) In an action upon a bond reciting the rendition of a judgment, from which the obligor, the defendant, was about to sue out a writ of error, with condition to transmit the record, etc., and prosecute the writ with effect, the defendant pleaded general performance, and the plaintiff assigned breaches in the words of the condition. *Held*, that the plaintiff need not produce in evidence the record of the original judgment, as the plea of general performance affirmed the existence of the judgment.—*Frantz v. Smith*, 5 Gill 280.

(g) Judgment was obtained against defendants "as administrators." Defendants appealed and filed an appeal bond, reciting that judgment was rendered against defendants. The judgment was affirmed, and in an action brought on the appeal bond issue was made and joined as to whether the judgment affirmed and that mentioned in the bond were the same. *Held*, that after oyer the bond declared on became part of the record, and it then appeared judicially to the court that the judgment recited therein and the judgment on which plaintiff had declared were not the same as that relied on in the replication, and the record of the affirmed judgment was inadmissible in evidence.—*Birckhead v. Saunders' Ex'r*, 2 H. & G. 82.

(h) In an action on an appeal bond providing that appellant shall prosecute with effect, plaintiff should reply to plea of af-

firmance that defendant did not prosecute his appeal with effect, whereby he had sustained damages to a certain amount.—*Karthauss v. Owings*, 6 H. & J. 134.

#### § 1246.—Evidence.

(a) In an action against a surety on an appeal bond dated prior to its approval and the granting of the appeal, the plaintiff is not estopped by the recital in the bond that "the said J. (the principal obligor) hath prayed an appeal," to show that the appeal was taken after the date of the bond.—*Jenkins v. Hay*, 28 Md. 547.

(b) In an action on an appeal bond given on an appeal from a decree of foreclosure, the record of proceedings antecedent to the decree of sale, in which the amount of the mortgage debt was ascertained, is admissible.—*Jenkins v. Hay*, 28 Md. 547.

(c) In an action on an appeal bond entered into by a defendant in replevin, against whom there was a final judgment for a return, it was *held*, on an inquiry of damages, that the plaintiff might give in evidence the value of the goods replevied, that the record of the replevin was proper evidence to identify them, and that the appraisalment was *prima facie* evidence of their value.—*Karthauss v. Owings*, 2 G. & J. 430. [*Cited and annotated in 30 L. R. A.*

(N. S.) 367, on elements of damages recoverable on replevin bond.]

(d) In a suit on an appeal bond entered into by a defendant in replevin, against whom there was a final judgment for the return of the property, the record of a judgment against the surety, and the execution thereon issued, returned *cepi* "stayed by injunction," was not admissible to show that the amount of such judgment ought to be allowed by the jury in assessing damages.—*Karthauss v. Owings*, 2 G. & J. 430. [*Cited and annotated in 30 L. R. A.* (N. S.) 367, on elements of damages recoverable on replevin bond.]

#### § 1247.—Trial, judgment, and review. *Cross-Reference.*

Amendment or correction of verdict, *see* "Trial," § 340.

(a) In a suit on an appeal bond entered into by a defendant in replevin, against whom there was a final judgment for a return of the property, plaintiff's right to recover interest on the value of the goods replevied and on the costs of the replevin suit was a question exclusively for the jury.—*Karthauss v. Owings*, 2 G. & J. 430. [*Cited and annotated in 30 L. R. A.* (N. S.) 367, on elements of damages recoverable on replevin bond.]

## APPEARANCE.

### *Scope-Note.*

[INCLUDES acts or proceedings by which parties to civil actions in general place themselves before the court, personally or by representation; nature, requisites, and validity of entry or notice of appearance, and filing and service thereof; withdrawal of or setting aside appearance; what constitutes general or special appearance, and operation and effect thereof as a submission to the jurisdiction and waiver of objections thereto, or of objections to defects, irregularities, etc., in process or service thereof; and effect of failure to appear.

[EXCLUDES appearance by particular classes of persons (*see* "Infants"; "Corporations"; and other specific heads); authority of attorney to appear (*see* "Attorney and Client"); judgment by default on failure to appear, and opening default (*see* "Judgment"); intervention in actions by persons not parties (*see* "Parties"); appearance in particular classes of proceedings (*see* "Attachment"; "Garnishment"; and other specific heads); and appearance in proceedings before justices of the peace (*see* "Justices of the Peace"). For complete list of matters excluded, *see* cross-references, *post*.]

### *Analysis.*

§ 1. Nature of proceeding.

§ 2. Right of defendant to appear.

For cases in other jurisdictions, *see* same title and section number in Key Number Digests, and cross-references therein.

- § 3. Authority to enter appearance for another.
- § 4. Time for appearance.
- § 5. Entry and record of appearance.
- § 6. Notice of retainer and appearance.
- § 7. Proceedings constituting appearance.
- § 8. — In general.
- § 9. — General or special appearance.
- § 10. — General appearance after special appearance.
- § 11. Operation and effect in general.
- § 12. — Relation of party to cause in general.
- § 13. — Rights acquired by defendant.
- § 14. — Effect as to nature and extent of remedy.
- § 15. — Effect of unauthorized appearance.
- § 16. Jurisdiction acquired.
- § 17. — In general.
- § 18. — Of cause of action.
- § 19. — Of the person.
- § 20. Waiver of process or notice.
- § 21. Waiver of objections.
- § 22. — In general.
- § 23. — Venue or change of venue.
- § 24. — Defects in process or service.
- § 25. — Defects or irregularities in pleading or other proceedings.
- § 26. Effect of appearance after judgment.
- § 27. Withdrawal.
- § 28. Setting aside or striking out.
- § 29. Failure to appear.

#### *Cross-References.*

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| <p>Adoption by federal courts of practice of state courts, see "Courts," § 345.</p> <p>Affecting nature of judgment on mechanic's lien claim, see "Mechanics' Liens," § 305.</p> <p>Affecting removal of cause, see "Removal of Causes," § 17.</p> <p>Bail bond reciting appearance at stated time as affecting time for trial, see "Criminal Law," § 575.</p> <p>By particular persons, see "Amicus Curiae"; "Bankruptcy," §§ 300, 413; "Corporations," §§ 508, 669; "Executors and Administrators," §§ 441, 471; "Garnishment," § 104; "Guardian and Ward," § 129; "Husband and Wife," § 225; "Infants," §§ 11, 90; "Insane Persons," §§ 14, 96; "Municipal Corporations," § 1030; "Railroads," § 24; "Receivers," § 180; "Trusts," § 260.</p> <p>Constituting commencement of action, see "Action," § 64.</p> <p>Curing issuance and service of process on Sunday, see "Sunday," § 30.</p> <p>Failure of counsel to appear as ground for continuance, see "Criminal Law," § 593.</p> <p>Failure to appear as evidence of guilt, see "Criminal Law," § 353.</p> <p>Failure to appear as waiver of right to challenge jurors, see "Jury," § 110.</p> | <p>Failure to appear as waiver of right to trial by jury, see "Jury," § 28.</p> <p>Failure to appear as ground for judgment by default, see "Judgment," § 103.</p> <p>Failure to appear in appellate court as ground for affirmance, see "Criminal Law," § 1182.</p> <p>Filing petition and bond for removal of cause as special appearance, see "Removal of Causes," § 112.</p> <p>In justices' courts, see "Justices of the Peace," § 84.</p> <p>In municipal courts, see "Courts," § 189.</p> <p>In particular actions or proceedings, see "Appeal and Error," §§ 22, 434, 435; "Attachment," § 210; "Bail," §§ 32, 88; "Bankruptcy," §§ 24, 300, 413; "Contempt," § 57; "Corporations," § 266; "Criminal Law," §§ 250, 600; "Dismissal and Nonsuit," § 81; "Divorce," §§ 65, 271; "Drains," § 31; "Elections," § 281; "Eminent Domain," § 185; "Executors and Administrators," § 471; "Garnishment," §§ 74, 104; "Habeas Corpus," § 48; "Highways," §§ 31, 72; "Infants," § 11; "Injunction," § 114; "Insane Persons," § 14; "Interpleader," § 40; "Judgment," §§ 323, 388, 804; "Justices of the Peace," § 161; "Motions," § 32; "Parti-</p> |
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tion," § 51; "Patents," § 291; "Reference," § 56; "Specific Performance," § 107; "Trusts," § 367; "Wills," § 271.  
 Jurisdiction acquired by appearance in state in rebellion of attorney for nonresident, see "States," § 17.  
 Mistake in entry as to appearance as ground for vacating judgment, see "Judgment," § 359.  
 Mode of objecting to jurisdiction to abate action, see "Abatement and Revival," § 3.  
 Necessity of giving notice of appeal to parties who have not appeared, see "Appeal and Error," §§ 413-415.  
 Objection to process first raised on appeal, see "Appeal and Error," § 188.  
 Practice in federal courts, see "Courts," § 345.  
 Presumptions on appeal or writ of error, see "Appeal and Error," § 914.  
 Process, directions as to appearance, see "Process," § 33.  
 Right of clerk to appearance fee, see "Clerks of Courts," § 18.

### § 1. Nature of proceeding.

#### *Cross-Reference.*

Constituting commencement of action, see "Action," § 64.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 2. Right of defendant to appear.

(a) Every litigant may appear in person or by attorney.—*Henck v. Todhunter*, 7 H. & J. 275, 16 Am. Dec. 300. [*Cited and annotated* in 21 L. R. A. 848, on effect of judgment on unauthorized appearance; in 33 L. R. A. 516, on power of attorney to withdraw answer or appearance and permit default judgment.]

### § 3. Authority to enter appearance for another.

#### *Cross-Reference.*

See post, § 8.

### § 4. Time for appearance.

### § 5. Entry and record of appearance.

#### *Annotation.*

See Code, art. 16, § 148; art. 75, §§ 145, 146.

### § 6. Notice of retainer and appearance.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 7. Proceedings constituting appearance.

Rules of court regulating appearance, see "Courts," § 413.

Submission of parties to jurisdiction as authorizing court to amend judgment after term, see "Judgment," § 299.

Unauthorized appearance as ground for collateral attack on judgment, see "Judgment," § 492.

Unauthorized appearance as ground for equitable relief against judgment, see "Judgment," § 421.

Unauthorized appearance as ground for opening or vacating judgment, see "Judgment," § 352.

Waiving objections as to suit in federal court being brought in wrong district, see "Courts," § 276.

Waiving objections to jurisdiction of appellate court, see "Appeal and Error," § 22.

Want of appearance ground for dismissal and nonsuit, see "Dismissal and Nonsuit," § 60.

Withdrawal of appearance, ground for judgment by default, see "Judgment," § 104.

### § 8.— In general.

#### *Cross-References.*

See post, §§ 19, 22.

Effect of appearance after judgment, see post, § 26.

(a) The appearance of a nonresident defendant, by attorney, in an attachment case, for the purpose of moving that a judgment of condemnation rendered therein more than a year before be stricken out, and the execution thereon be quashed, cannot be construed to be a voluntary appearance in an action of assumpsit brought at the same time against him personally, wherein a summons was issued, and returned non est, and never renewed.—*Potomac Steamboat Co. v. Clyde*, 51 Md. 174.

(b) The giving of a bond, by third parties, to dissolve an attachment, is neither in fact nor in law an appearance to the action by the defendant in the attachment; nor does it authorize the inference that he had any notice of the transaction, or any opportunity to appear and defend the suit.—*Clark v. Bryan*, 16 Md. 171.

### § 9.— General or special appearance.

#### *Cross-References.*

Mode of objecting to jurisdiction to abate action, see "Abatement and Revival," § 3.

Removal of cause from state to federal court, effect on right to object to jurisdiction or service of process of state court, see "Removal of Causes," § 112.  
 Effect of appearance after judgment, see post, § 26.

### § 10.— General appearance after special appearance.

#### *Cross-References.*

See ante, § 9.

Effect as waiver of objections to jurisdiction, see post, § 19.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 11. Operation and effect in general.

#### *Cross-References.*

Constituting commencement of action, see "Action," § 64.

Of witness after admission of his testimony to prevent continuance, see "Criminal Law," § 600.

On right to removal of cause, see "Removal of Causes," § 17.

Submission of parties to jurisdiction as authorizing court to amend judgment after term, see "Judgment," § 299.

To have judgment on constructive service set aside as changing judgment from one in rem to one in personam, see "Judgment," § 804.

### § 12.— Relation of party to cause in general.

(a) In a general creditors' suit, or where there is a fund in court, and an order requiring creditors to come in and assert their rights, and to participate in the distribution, the simple fact of a party's appearing and filing his claim in the case gives rise to the presumption that he intended to make himself a party to the record.—*Thomas v. Farmers' Bank*, 46 Md. 43.

(b) Whenever a bill or petition is filed in the orphans' court, whether or not other parties interested in the proceedings are cited to appear, if, in fact, they do appear and answer, the proceedings are plenary, under act 1798, ch. 101, sub-ch. 15, § 16 (Code, art. 93, § 254).—*Pegg v. Warford*, 4 Md. 385.

### § 13.— Rights acquired by defendant.

### § 14.— Effect as to nature and extent of remedy.

#### *Cross-Reference.*

As to nature of judgment on mechanic's lien claim, see "Mechanics' Liens," § 305.

### § 15.— Effect of unauthorized appearance.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 16. Jurisdiction acquired.

#### *Cross-References.*

See ante, §§ 8, 9.

By unauthorized appearance, see ante, § 15.

Effect of appearance as to failure to allege jurisdictional facts, see post, § 25.

Effect of removal of cause, see "Removal of Causes," § 112.

In appellate court as waiving objections to jurisdiction of that court, see "Appeal and Error," § 22.

In justice's court, see "Justices of the Peace," § 84.

In state in rebellion of attorney for non-resident, see "States," § 17.

### § 17.— In general.

(a) Where defendant appeared by counsel, and had the case continued until the next term, and the declaration was filed, and a rule entered that he plead, and service was acknowledged, and the case was then continued until the next term, defendant waived his right to question the jurisdiction of the court.—*Yoe v. Gelston*, 37 Md. 233.

(b) A party by appearing to a cause and pleading to the merits is estopped from denying the jurisdiction of the court.—*Brooks v. Delaplaine*, 1 Md. Ch. 351.

### § 18.— Of cause of action.

#### *Cross-Reference.*

See ante, § 17.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 19.— Of the person.

#### *Cross-References.*

See ante, §§ 5, 8, 9, 10, 17, 18; post, § 24.

Effect of appearance after judgment, see post, § 26.

(a) A special appearance by a nonresident for the purpose of objecting to the jurisdiction of the court over him does not confer on the court jurisdiction to render a decree on the merits.—*McSherry v. McSherry*, 113 Md. 395, 77 Atl. 653.

(b) Where defendant appeared in propria persona and objected to the jurisdiction of the court, the subsequent entry of a general appearance by counsel, who took no other action than to insist on the plea to the jurisdiction, did not waive the objection thereto.—*State v. Shipley*, 98 Md. 657, 57 Atl. 12; *Same v. Same*, 98 Md. 664, 57 Atl. 1131.

(c) Where the defendant to a bill in a suit in chancery instituted in Maryland resided in the District of Columbia, and certain property, the subject of controversy, had been removed from the state, and was also in the District when the bill was filed, and the defendant appeared, answered the bill, and contested the merits, but excepted in his answer to the jurisdiction, it was *held*, that he had waived the objection by such appearance and answer.—*Carroll v. Lee*, 3 G. & J. 504, 22 Am. Dec. 350.

## § 20. Waiver of process or notice.

### *Cross-References.*

See ante, §§ 8, 12-15; post, § 24.

In drainage proceedings, see "Drains," § 30.

In justice's court, see "Justices of the Peace," § 84.

Notice of proceedings to set aside nonsuit and reinstate cause, see "Dismissal and Nonsuit," § 81.

(a) Appearance and pleading to the merits waive the absence of process and service thereof.—*Swann v. Shemwell*, 2 H. & G. 283; *Belt v. Blackburn*, 28 Md. 227.

## § 21. Waiver of objections.

### § 22.— In general.

#### *Cross-Reference.*

In justice's court, see "Justices of the Peace," § 84.

(a) Appearance and pleading by the administrators of a decedent is a waiver of the objection that defendant was dead when the suit was instituted.—*Young v. Citizens' Bank*, 31 Md. 66.

## § 23.— Venue or change of venue.

### *Cross-References.*

See ante, §§ 8, 19.

Suit in federal court being brought in wrong district, see "Courts," § 276.

(a) Where the subject-matter of a suit is one over which the court has jurisdiction, the appearance of the defendant by attorney waives an objection to the jurisdiction, based on the venue.—*Ireton v. Baltimore*, 61 Md. 432.

## § 24.— Defects in process or service.

### *Cross-References.*

See ante, §§ 8, 9, 10, 19.

Effect of appearance after judgment, see post, § 26.

Curing issuance and service of process on Sunday, see "Sunday," § 30.

In justice's court, see "Justices of the Peace," § 84.

(a) A defendant, being notified by an officer that the latter had a summons for him and his wife, referred the officer to his attorney, who indorsed it, over his signature, "Enter my appearance for defendants." *Held*, that there was a waiver of formal service, and defendants were properly in court.—*Harrison v. Morton*, 87 Md. 671, 40 Atl. 897.

(b) A defective return of the summons in a partition suit against a city is waived by the appearance of the city's solicitor, the city's receipt of its share of the proceeds of the sale, and its execution of a release therefor.—*Dugan v. City of Baltimore*, 70 Md. 1, 16 Atl. 501.

(c) A general appearance in person or by attorney, or a plea to the merits, is a waiver of defects in the service of process.—*Stigers v. Brent*, 50 Md. 214, 33 Am. Rep. 317; *Ireton v. City of Baltimore*, 61 Md. 432.

(d) The failure of the sheriff to summon the defendant in replevin is cured by the latter's appearance.—*Swann v. Shemwell*, 2 H. & G. 283.

## § 25.— Defects or irregularities in pleading or other proceedings.

### *Cross-Reference.*

See ante, §§ 22, 24.

(a) Where the narr. did not give the surname of defendant, but only his first Christian name and the initial of his middle name, but in the affidavit his name was given in full, and he appeared and pleaded, describing himself as said defendant, he was estopped from setting up the misnomer in the narr.—*Rich v. Boyce*, 39 Md. 314.

## § 26. Effect of appearance after judgment.

### *Cross-References.*

Proceedings constituting appearance after judgment, see ante, §§ 8, 9.

In appellate court as waiving objections to jurisdiction of that court, see "Appeal and Error," § 22.

## § 27. Withdrawal.

### *Cross-Reference.*

Unauthorized appearance, see ante, § 15.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 28. Setting aside or striking out.**

(a) An appearance will not be stricken out on motion of administrators on the ground that the original defendant was dead, and the appearance was irregular, where the administrators, after appearing, pleaded and made various motions, and allowed the cause to proceed for several years.—*Young v. Citizens' Bank*, 31 Md. 66.

(b) Where defendant had fully recognized entries of bail and appearance, such entries will not be stricken out so as to enable him to plead otherwise than to the merits.—*Schleigh v. Hagerstown Bank*, 4 Gill 306.

**§ 29. Failure to appear.***Cross-References.*

Effect of nonappearance of counsel on right to continuance for his absence, see "Criminal Law," § 593.

Failure of accused to appear as evidence of guilt, see "Criminal Law," § 353.

Failure of appellant to appear in appellate court as ground of affirmance, see "Criminal Law," § 1182.

Ground for judgment by default, see "Judgment," § 103.

Necessity of giving notice of appeal to parties who have not appealed, see "Appeal and Error," §§ 413-415.

Waiver of right to challenge jurors, see "Jury," § 110.

Waiver of right to trial by jury, see "Jury," § 28.

Want of appearance ground for dismissal and nonsuit, see "Dismissal and Nonsuit," § 60.

(a) The provision of Code, art. 75, § 145, authorizing the court to enter the appearance of a defendant, who has been summoned, and fails to appear, and to proceed in the same manner as if the party had appeared in person, does not apply to cases of summary proceedings against a tax collector and his sureties, under art. 81, § 76.—*Sprigg v. State*, 54 Md. 469.

**APPELLATE COURTS.***Cross-References.*

Of District of Columbia, see "Courts," § 445.

State courts, see "Courts," §§ 203-254.

Territorial courts, see "Courts," § 430.

United States courts, see "Courts," §§ 377-407, 417.

*Annotation.*

1 Words and Phrases, 452.

**APPELLATE JURISDICTION.***Cross-References.*

In civil actions in general, see "Appeal and Error," §§ 17-23, 454-457.

In civil proceedings before justices of the peace, see "Justices of the Peace," §§ 141, 195.

In criminal prosecutions, see "Criminal Law," §§ 260, 1016-1020.

In proceedings in bankruptcy, see "Bankruptcy," §§ 441, 450-453.

In suit in admiralty, see "Admiralty," § 102.

Of courts of District of Columbia, see "Courts," § 445.

Of particular state courts, see "Courts," §§ 203-254.

Of territorial courts, see "Courts," § 430.

Of United States courts, see "Courts," §§ 401-407, 417.

*Annotation.*

1 Words and Phrases, 452-454.

**APPENDAGES.***Cross-References.*

To property conveyed, see "Deeds," §§ 111-117; "Fixtures."

To property devised, see "Wills," §§ 558-589.

*Annotation.*

1 Words and Phrases, 454.

**APPENDANT.***Cross-References.*

Easements, see "Easements"; "Waters and Water Courses," §§ 127-158.

*Annotation.*

1 Words and Phrases, 454.

**APPLAUSE.***Cross-Reference.*

By bystanders at trial as ground for new trial, see "Criminal Law," § 930.

**APPLIANCES.***Cross-References.*

Competency of witnesses to testify as experts on question relating to construction or management of appliances, see "Evidence," § 539.

For schools, see "Schools and School Districts," § 73.

Liability of master for injuries to servant from defects in or failure to furnish appliances, see "Master and Servant," §§ 101-129.

Liability of municipal corporations for injuries from defective appliances, see "Municipal Corporations," § 852.

Opinion evidence as to construction and repair of appliances, see "Evidence," § 513.

Opinion evidence as to management and operation of appliances, see "Evidence," § 514.

Sufficiency and safety of appliances for transportation of passengers, see "Carriers," § 288.

*Annotation.*

1 Words and Phrases, 455, 456.

**APPLICATION.**

*Cross-References.*

For appointment to office, see "Municipal Corporations," § 134.

For authority to practice medicine or surgery, see "Physicians and Surgeons," § 5.

For creation and organization of school district, see "Schools and School Districts," § 27.

For enactment of special or local law, notice of intention, see "Statutes," § 8½.

For incorporation or license to organize corporation, see "Corporations," § 17.

For insurance, see "Insurance," §§ 130, 151, 713, 715.

For license as innkeeper, see "Innkeepers," § 4.

For license for occupation or privilege in general, see "Licenses," § 22.

For license or franchise to operate ferry, see "Ferries," § 14.

For license to build wharf or dock, see "Navigable Waters," § 43.

For liquor license, see "Intoxicating Liquors," §§ 64-66.

For local option election, see "Intoxicating Liquors," § 32.

For patent, see "Patents," §§ 97-114.

For patent for mining claim, see "Mines and Minerals," § 40.

For permit to use streets or roads by telegraph or telephone company, see "Telegraphs and Telephones," § 10.

For position as school teacher, see "Schools and School Districts," § 133.

For public improvements, see "Municipal Corporations," § 292.

For seed grain loan, see "Agriculture," § 3.

For tax deed, see "Taxation," § 751.

Of assets in general, see "Marshaling Assets and Securities."

Of assets of partnership to liabilities, see "Partnership," §§ 176-190.

Of deposits to debts due bank, see "Banks and Banking," § 134.

Of earnings, income and sinking funds of railroad companies, see "Railroads," § 173.

Of instructions to case, see "Criminal Law," § 814; "Trial," §§ 250-252.

Of payments, see "Payment," §§ 36-47.

Of proceeds of execution sale to judgment, see "Execution," § 325.

Of proceeds of judicial sales in general, see "Judicial Sales," § 62.

Of proceeds of mortgage sale to debt secured, see "Mortgages," § 565.

Of proceeds of obligations and securities of railroad companies, see "Railroads," § 170.

Of proceeds of property sold by assignee for benefit of creditors, see "Assignments for Benefit of Creditors," § 248.

Of proceeds of sale of bankrupt's property, see "Bankruptcy," § 267.

Of proceeds of sale of property of decedent, see "Executors and Administrators," §§ 147, 166.

Of proceeds of sale of trust property by trustee, see "Trusts," § 202.

Of purchase money on sale under power, see "Powers," § 44.

To purchase land bid in by state for non-payment of taxes, see "Taxation," § 679.

To purchase state school land, see "Public Lands," § 173.

*For particular remedies or forms of relief.*

See "Attachment," § 121; "Bail," § 49; "Certiorari," § 42; "Deposits in Court," § 2; "Habeas Corpus," §§ 40-120; "Injunction," §§ 140-143, 150-153, 155, 157-159, 165-167, 169-184, 186-188; "Mandamus," § 154; "Ne Exeat," § 6; "Pardon," § 7; "Prohibition," § 20; "Reference," § 27.

Additional assignments of errors, see "Criminal Law," § 1129.

Alimony or other allowances in actions for divorce, see "Divorce," §§ 214, 226, 239, 253.

Allotment of homestead, see "Homestead," § 51.

Allowance of appeal in probate proceedings, see "Wills," § 365.

Allowance of appeal or writ of error, see "Appeal and Error," § 361; "Criminal Law," § 1071; "Justices of the Peace," § 156.

Allowance of counsel fees and expenses in probate proceedings and actions relating to wills or probate, see "Wills," § 416.

Alteration of highways, see "Highways," § 72.

Amendment of defects as to parties, see "Parties," § 95.

Amendment of pleadings, see "Pleading," § 238.

Amendment of pleadings in equity, see "Equity," § 290.

Amendment of pleadings on reference, see "Reference," § 58.

Amendment or correction of judgment, see "Judgment," §§ 319-321, 323-328.

Appointment of commissioners, appraisers, or viewers, in condemnation proceedings, see "Eminent Domain," § 226.

Appointment of guardian, see "Guardian and Ward," § 13.

Appointment of receiver, see "Receivers," §§ 32-40, 42, 43, 45-47.

Appointment of receiver for insolvent corporation, see "Corporations," §§ 555-558, 621.

Arrest in extradition proceedings, see "Extradition," § 35.

Arrest of judgment, see "Criminal Law," § 974.

Assessment by jury in condemnation proceedings, see "Eminent Domain," § 214.



- Assessment of damages for municipal improvements, see "Municipal Corporations," § 402.
- Assignment of oyster planting grounds, see "Fish," § 7.
- Benefits, see "Beneficial Associations," § 18.
- Bill of particulars, see "Indictment and Information," § 121; "Pleading," § 323.
- Certificate of grounds for prosecution by indictment, see "Indictment and Information," § 3.
- Certificate of probable cause, see "Criminal Law," § 1073.
- Certiorari in general, see "Certiorari," § 42.
- Certiorari or other proceeding to bring up record, see "Appeal and Error," § 660.
- Certiorari to review judgment of justice of the peace, see "Justices of the Peace," § 202.
- Change of venue, see "Criminal Law," §§ 130-137; "Venue," §§ 53-63, 65-72.
- Composition with creditors in bankruptcy proceedings, see "Bankruptcy," §§ 379-382.
- Confirmation or revision of assessment for public improvements, see "Municipal Corporations," § 500.
- Continuance, see "Continuance," §§ 37, 40, 44-48; "Criminal Law," §§ 603-611.
- Custody of or access to children on divorce, see "Divorce," § 301.
- Deficiency judgment on foreclosure of mortgage, see "Mortgages," § 559.
- Discharge of accused for delay in prosecution, see "Criminal Law," § 576.
- Discharge of bankrupt, see "Bankruptcy," §§ 410-412, 415.
- Discharge of insolvent, see "Insolvency," § 151.
- Dismissal of action or nonsuit, see "Dismissal and Nonsuit," §§ 67-73.
- Dissolution of corporation, see "Corporations," § 610.
- Establishment of drains, see "Drains," § 23.
- Establishment of highways, see "Highways," § 29.
- Examination of bankrupt or others, see "Bankruptcy," § 235.
- Examination of party before trial, see "Discovery," §§ 51-56.
- Extra allowance, see "Costs," § 166.
- Imposition of penalty for frivolous appeal or delay, see "Costs," § 262.
- Incorporation of municipalities, see "Municipal Corporations," § 12.
- Injunction in bankruptcy proceedings, see "Bankruptcy," § 105.
- Inquisition of lunacy, see "Insane Persons," § 12.
- Inquisition of lunacy after conviction of crime, see "Criminal Law," § 981.
- Judgment by default, see "Judgment," §§ 122, 123.
- Judgment on pleadings, see "Pleading," § 350.
- Judgment on trial of issues, see "Judgment," § 213.
- Leave to bring in parties, see "Parties," § 53.
- Leave to dismiss action or take voluntary nonsuit, see "Dismissal and Nonsuit," §§ 32-34.
- Leave to file bill of review, see "Equity," § 456.
- Leave to file information, see "Indictment and Information," § 40.
- Leave to intervene, see "Parties," § 44.
- Leave to sue in forma pauperis, see "Costs," § 132.
- Leave to sue in quo warranto, see "Quo Warranto," § 43.
- New trial, see "Criminal Law," §§ 949-961; "New Trial," §§ 109-168.
- Of pauper for relief, see "Paupers," § 41.
- Opening or vacating execution sale, see "Execution," § 253.
- Opening or vacating judgment, see "Judgment," §§ 151-153, 155, 158-164, 167-172, 384-388, 390-397; "Judicial Sales," § 42.
- Preliminary injunction in suit for infringement of patent, see "Patents," § 303.
- Process to compel attendance of witnesses, see "Witnesses," § 9.
- Production and inspection of writings or other matters, see "Discovery," § 97.
- Publication of process, see "Process," §§ 95-97.
- Quashing or vacating execution, see "Execution," § 163.
- Quashing, vacating, or dissolving attachment, see "Attachment," §§ 243-251.
- Quashing, vacating or dissolving garnishment, see "Garnishment," § 194.
- Reference, see "Equity," § 402.
- Rehearing in appellate court, see "Appeal and Error," § 833; "Criminal Law," § 1133.
- Reinstatement of appeal from justice's court, see "Justices of the Peace," § 166.
- Release of insane person from asylum, see "Insane Persons," § 51.
- Relief from failure to file brief in time, see "Criminal Law," § 1130.
- Removal of accused to other district for trial, see "Criminal Law," § 242.
- Removal of pauper, see "Paupers," § 27.
- Revival of action on death of party, see "Abatement and Revival," § 75.
- Revocation of discharge of bankrupt, see "Bankruptcy," § 417.
- Revocation of licenses, see "Theaters and Shows," § 3.
- Sale of property of decedent, see "Executors and Administrators," §§ 332-359.
- Sale of property of infant, see "Guardian and Ward," §§ 86, 90.
- Security for costs, see "Costs," §§ 111-116.
- Security to keep the peace, see "Breach of the Peace," § 20.
- Separate trial of co-defendants, see "Criminal Law," § 622.
- Setting aside dismissal and reinstatement of cause, see "Dismissal and Nonsuit," § 43.
- Special or struck jury, see "Jury," § 71.
- Stay of proceedings against bankrupt in state court, see "Bankruptcy," § 391.
- Striking out matter from pleading, see "Pleading," § 365.

Striking out pleading, see "Pleading," § 360.  
 Substituted service of process, see "Process," § 74.  
 Substitution of claimant, see "Interpleader," § 40.  
 Substitution of parties, see "Parties," § 61.  
 Summary judgment, see "Judgment," §§ 183-186.  
 Summary judgment or order for sale of land, to enforce assessment for public improvement, see "Municipal Corporations," § 551.  
 Summary relief in general, see "Motions."  
 Supersedeas or stay on appeal or writ of error, see "Appeal and Error," § 478.  
 Support of children on divorce, see "Divorce," § 307.  
 Taking depositions, see "Depositions," §§ 32-37.  
 Taxation of costs, see "Costs," §§ 199, 201.  
 To compel election between causes of action, see "Pleading," § 369.  
 To permit intervention by trustee in bankruptcy, see "Bankruptcy," § 156.  
 To reopen bankruptcy proceedings, see "Bankruptcy," § 372.  
 To set aside judgment in criminal prosecutions, see "Criminal Law," § 998.  
 Vacation of highways, see "Highways," § 77.  
 Warrant in bankruptcy proceedings, see "Bankruptcy," § 108.  
 Writ of error coram nobis, see "Criminal Law," § 997; "Judgment," § 324.  
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 Annotation.

1 Words and Phrases, 456, 457.

## APPOINTMENT.

### Cross-References.

Delegation of power to appoint officers, see "Constitutional Law," §§ 60, 61, 63.  
 Judicial notice of appointment, see "Evidence," § 45.  
 Legislative encroachments on right of executive to make appointments, see "Constitutional Law," § 58.  
 Mandamus to control appointments to office, see "Mandamus," § 76.  
 Of adjusters of loss under insurance policy, see "Insurance," § 564.  
 Of agents, see "Principal and Agent," §§ 8-13.  
 Of agents or employes of county, see "Counties," § 63.  
 Of agents or employes of municipal corporations, see "Municipal Corporations," § 217.  
 Of agents or employes of state, see "States," § 53.  
 Of agents of employees of United States, see "United States," § 36.  
 Of appraisers of decedent's estate, see "Executors and Administrators," § 67.  
 Of appraisers or arbitrators of loss under insurance policy, see "Insurance," §§ 570, 571.  
 Of arbitrators in general, see "Arbitration and Award," § 26.

Of assignee or trustee for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 200-214.  
 Of assignees or trustees in insolvency, see "Insolvency," §§ 44-51.  
 Of broker, see "Brokers," § 7.  
 Of commissioners, appraisers, or viewers, in condemnation proceedings, see "Eminent Domain," § 228.  
 Of commissioners or viewers in highway proceedings, see "Highways," §§ 37, 77.  
 Of corporate officers, see "Banks and Banking," §§ 51, 251; "Corporations," §§ 281-295.  
 Of counsel for accused, see "Criminal Law," § 641.  
 Of counsel for prosecution, see "Criminal Law," §§ 639, 640.  
 Of deputy sheriff, see "Sheriffs and Constables," § 18.  
 Of executors or administrators, see "Executors and Administrators," §§ 8-37, 517, 518.  
 Of expert to analyze food, see "Food," § 19.  
 Of factors, see "Factors," § 5.  
 Of firemen, see "Municipal Corporations," § 197.  
 Of foreman of grand jury, see "Grand Jury," § 21.  
 Of guardians, see "Guardian and Ward," §§ 8-27.  
 Of guardians ad litem, see "Infants," §§ 78-81, 94.  
 Of guardians or committees for insane person, see "Insane Persons," §§ 32-39.  
 Of insurance agents, see "Insurance," § 74.  
 Of interpreters in civil actions, see "Trial," § 22.  
 Of interpreters in criminal prosecutions, see "Criminal Law," § 642.  
 Of letter carriers, see "Post Office," § 10.  
 Of municipal agents and employes, see "Municipal Corporations," § 217.  
 Of new trustee to exercise power of sale in trust deed, see "Mortgages," § 342.  
 Of officers of political party organizations, see "Elections," § 121.  
 Of official newspapers, see "Newspapers," § 1.  
 Of policemen, see "Municipal Corporations," § 184.  
 Of receivers in foreclosure proceedings, see "Mortgages," §§ 467-470.  
 Of receivers in general, see "Banks and Banking," § 77; "Building and Loan Associations," § 42; "Corporations," §§ 552-559; "Railroads," § 206; "Receivers," §§ 29-30, 206.  
 Of receivers in supplementary proceedings, see "Execution," § 406, 407.  
 Of referee in bankruptcy, see "Bankruptcy," § 221.  
 Of referees in general, see "Reference," §§ 39, 40.  
 Of stenographers in civil actions, see "Trial," § 23.  
 Of stenographers in criminal prosecutions, see "Criminal Law," § 643.  
 Of surveyors to lay out highway, see "Highways," § 49.

Of teachers, see "Schools and School Districts," § 133.  
 Of terms of court, see "Courts," § 63.  
 Of trustees, see "Trusts," §§ 155-158, 160, 169.  
 Of trustees in bankruptcy, see "Bankruptcy," §§ 118-134.  
 Of trustees of charitable gift, see "Charities," § 47.  
 Of trustee to sue on administration bond, see "Executors and Administrators," § 537.  
 Of trustees under railroad mortgage, see "Railroads," § 169.  
 Of umpire, see "Arbitration and Award," §§ 37, 38.  
 Pleading facts or conclusions as to appointment to office, see "Pleading," § 8.  
 Powers of appointment, see "Powers."  
 Restraining appointment of officer, see "Injunction," § 81.

#### *Of public officers.*

See "Ambassadors and Consuls," § 1;  
 "Clerks of Courts," § 3; "Court Commissioners," § 1½; "District and Prosecuting Attorneys," § 2; "Judges," §§ 3, 16; "Justices of the Peace," § 3; "Notaries," § 2; "Officers," § 6; "Registers of Deeds," § 2; "Sheriffs and Constables," §§ 5, 9; "United States Commissioners," § 2.  
 Commissioners in proceedings to make public improvement, see "Municipal Corporations," § 307.  
 Contracts affecting appointment, see "Contracts," § 124.  
 County boards, see "Counties," § 41.  
 County officers, see "Counties," § 62.  
 County superintendent of schools, see "Schools and School Districts," § 48.  
 Drainage commissioners, see "Drains," § 17.  
 Election officers, see "Elections," §§ 51, 52, 100.  
 Fence viewers, see "Fences," § 13.  
 Health officers and boards, see "Health," §§ 3, 7.  
 Highway officers, see "Highways," § 93.  
 Hospital officers, see "Hospitals," § 4.  
 Inspection officers, see "Inspection," § 4.  
 Master in chancery or commissioner, see "Equity," § 393.  
 Mine inspectors, see "Mines and Minerals," § 93.  
 Municipal officers, see "Municipal Corporations," §§ 129-136.  
 Officers of army or navy, see "Army and Navy," § 7.  
 Officers to make judicial sales, see "Judicial Sales," § 4.  
 Poor-law officers, see "Paupers," § 5.  
 Prison officers, see "Prisons," § 7.  
 School officers, see "Schools and School Districts," §§ 53, 63.  
 State officers, see "States," § 46.  
 Street railroad commissioners, see "Street Railroads," §§ 9, 10.  
 Tax assessors, see "Schools and School Districts," § 106; "Taxation," §§ 312-315.  
 Tax collectors, see "Taxation," § 546.

Town officers, see "Towns," § 28.  
 Truant officers, see "Schools and School Districts," § 161.  
 United States officers, see "United States," § 35.

#### *Annotation.*

1 Words and Phrases, 458-461.

### APPORTIONMENT.

#### *Cross-References.*

Mandamus to control apportionment of debts between counties, see "Mandamus," § 73.  
 Of accretion to riparian lands, see "Navigable Waters," § 44.  
 Of annuity, see "Annuities," § 4.  
 Of assets and liabilities on alteration of school districts, see "Schools and School Districts," § 41.  
 Of assets and liabilities on alteration of towns or townships, see "Towns," § 11.  
 Of benefits and expenses on assessment for public improvement, see "Drains," § 79; "Highways," § 140; "Municipal Corporations," §§ 465-474.  
 Of compensation for property taken for public use, see "Eminent Domain," § 157.  
 Of costs, see "Costs," §§ 59-64, 241.  
 Of damages between coplaintiffs, see "Damages," § 210.  
 Of damages in verdict, see "Trial," § 335.  
 Of damages recovered for causing death, see "Death," § 101.  
 Of damages recovered for collision between vessels liable, see "Collision," §§ 144-146.  
 Of debts of intestate among heirs, or distributees, see "Descent and Distribution," § 135.  
 Of debts of testator among devisees or legatees, see "Wills," § 846.  
 Of excess of land among devisees, see "Wills," § 581.  
 Of excess or deficiency on establishment of boundaries, see "Boundaries," § 55.  
 Of expenses of or damages from drains, see "Drains," § 61.  
 Of expenses of or damages from highways, see "Highways," § 119.  
 Of fees between attorneys, see "Attorney and Client," § 151.  
 Of illegal ballots, see "Elections," § 298.  
 Of income or other stated payments among beneficiaries under will, see "Wills," § 735.  
 Of inroads, see "Grand Jury," § 4; "Jury," § 5.  
 Of losses on dissolution of firm, see "Partnership," § 303.  
 Of mechanic's lien on separate lots or buildings, see "Mechanics' Liens," § 183.  
 Of mortgage on transfer of part of property mortgaged, see "Mortgages," § 288.  
 Of municipal funds, see "Municipal Corporations," § 888.  
 Of municipal officers to subdivision of city, see "Municipal Corporations," § 127.

Of payments under charitable devise, see "Charities," § 48.  
 Of public funds, see "Schools and School Districts," § 19.  
 Of referee's fees, see "Reference," § 76.  
 Of rent, see "Landlord and Tenants," § 210.  
 Of rents and profits on assignment of dower, see "Dower," § 93.  
 Of representatives to state legislature, see "States," § 27.  
 Of reward, see "Rewards," § 12.  
 Of salvage, see "Salvage," §§ 37, 38.  
 Of shares of corporate stock, see "Corporations," § 87.  
 Of submerged lands, see "Navigable Waters," § 36.  
 Of taxes, see "Taxation," §§ 295-308.  
 Of taxes collected, see "Taxation," § 916.  
 Of wages, see "Master and Servant," § 75.

*Annotation.*

1 Words and Phrases, 462, 463.

**APPORTIONMENT WARRANTS.**

*Cross-Reference.*

See "Municipal Corporations," § 485.

**APPRAISAL.**

*Cross-References.*

Adjustment of loss under insurance policy, see "Insurance," §§ 563-579.  
 As evidence to show cost price of goods, see "Evidence," § 113.  
 Laws impairing obligation of contracts, see "Constitutional Law," § 181.  
 Of allowance to surviving wife, husband, or children from estate of decedent, see "Executors and Administrators," § 193.  
 Of bankrupt's property, see "Bankruptcy," § 248.  
 Of damages caused by trespassing animals, see "Animals," § 100.  
 Of damages for injuries to animals on or near railroad tracks, see "Railroads," § 431.  
 Of exempt property, see "Exemption," § 125; "Homestead," §§ 52, 200.

Of goods subject to duty, see "Customs Duties," §§ 72-79.  
 Of property attached, see "Attachment," § 172.  
 Of property for assessment of legacy, inheritance and transfer taxes, see "Taxation," §§ 895-898.  
 Of property in hands of receiver, see "Receivers," § 85.  
 Of property of decedent, see "Executors and Administrators," §§ 63-73, 353.  
 Of property of ward, see "Guardian and Ward," § 93.  
 Of property replevied, see "Replevin," § 43.  
 Of property taken on execution, see "Execution," § 141.  
 Of property to be sold at judicial sale, see "Judicial Sales," § 6.  
 Of property to be sold on foreclosure of mortgage, see "Mortgages," §§ 346, 505.  
 Of schoolhouse prior to vote on change of site, see "Schools and School Districts," § 69.  
 Of state lands, see "Public Lands," § 185.  
 Of state school land, see "Public Lands," § 173.

*Annotation.*

1 Words and Phrases, 463.

**APPRAISERS.**

*Cross-References.*

In condemnation proceedings to assess compensation, see "Eminent Domain," §§ 210, 225-239.  
 Of goods for customs duties, see "Customs Duties," § 58.

*Annotation.*

1 Words and Phrases, 463.

**APPREHENSION.**

*Cross-Reference.*

Of danger as defense to homicide, see "Homicide," § 116.

*Annotation.*

1 Words and Phrases, 464.

**APPRENTICES.**

*Scope-Note.*

[INCLUDES the relation of apprenticeship; rights, powers, duties, and liabilities incident to the relation; and legal proceedings relating thereto.

[EXCLUDES matters applicable to the relation of master and servant in general (see "Master and Servant"). For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. The relation of apprenticeship in general.
- § 2. What law governs.
- § 3. Parties to apprenticeship.
- § 4. — Persons subject to be apprenticed.

- § 5. — Persons who may take apprentices.
- § 5(a).— Bond to prevent binding out.
- § 6. — Power to consent to bind apprentices.
- § 7. Proceedings for apprenticing.
- § 8. Indentures or other contracts.
- § 9. Assignment of indentures or right to service.
- § 10. Cancellation of indenture or other termination of apprenticeship.
- § 11. Rights and liabilities of parties.
- § 12. — Construction of indentures and contracts in general.
- § 13. — Custody and control of person.
- § 14. — Support and instruction.
- § 15. — Services and earnings.
- § 16. — Misconduct and chastisement.
- § 17. — Restoring apprentice to master.
- § 17(a).— Medical attendance.
- § 18. — Personal injuries to apprentice.
- § 19. Actions for breach of covenant.
- § 20. Enticing away or harboring apprentice.
- § 21. — Civil liability.
- § 22. — Criminal responsibility.

#### *Cross-References.*

Contract by minors for services in general,  
see "Infants," § 49.  
Inmates of asylums, see "Asylums," § 5.

Relation of master and servant in general,  
see "Master and Servant."

§ 1. The relation of apprenticeship in general.

§ 2. What law governs.

§ 3. Parties to apprenticeship.

§ 4.— Persons subject to be apprenticed.

§ 5.— Persons who may take apprentices.

§ 5(a).— Bond to prevent binding out.

#### *Cross-Reference.*

See 3 Cent. Dig. Apprent., § 4.

(a) A bond offered by the keeper of a house of ill fame, in order that she might retain possession of a female child, against an application by a relative of the child, of good character, for her apprenticeship, was properly refused.—*Johnson v. Brannaman*, 10 Md. 495. [*Cited and annotated in 65 L. R. A. 693, on right of mother, or reputed father to custody or control of illegitimate.*]

(b) Under act 1793, c. 44, § 2 (see Code, art. 6, § 13), providing that the orphans' court shall not bind out a child as apprentice if any person shall give bond for its due and comfortable maintenance, the person tendering the bond must be suitable for the

performance of the duties imposed by the condition of the bond.—*Johnson v. Brannaman*, 10 Md. 495. [*Cited and annotated in 65 L. R. A. 693, on right of mother, or reputed father to custody or control of illegitimate.*]

§ 6.— Power to consent to bind apprentices.

(a) Code, art. 6, § 20, provides a method by which a father may bind his son as apprentice until he reaches the age of 21. A mother entered into a written agreement with defendants to bind her son, then 20 years of age, as apprentice for five years. *Held*, that the contract was void.—*Baker v. Lauterback*, 68 Md. 64, 11 Atl. 703.

(b) In its discretion, the orphans' court may apprentice a child, instead of receiving a bond for its due and comfortable maintenance, tendered by the person who had the child in possession.—*Johnson v. Brannaman*, 10 Md. 495. [*Cited and annotated in 65 L. R. A. 693, on right of mother, or reputed father to custody or control of illegitimate.*]

### § 7. Proceedings for apprenticing.

(a) No appeal lies from the decision of the orphans' court refusing to accept a bond to prevent the binding out of an infant, since the acceptance of such bond is a matter within the court's discretion.—*Johnson v. Brannaman*, 10 Md. 495. [*Cited and annotated* in 65 L. R. A. 693, on right of mother, or reputed father to custody or control of illegitimate.]

(b) By the consent of all the parties, a court bound out a minor as apprentice, the record reciting that "it is adjudged and ordered that M. be, and he is hereby, bound to K. until he is 21 years of age, to learn the trade of a saddler." *Held*, that an action of covenant could not be maintained for a breach of the order by the master.—*Mass v. Rogers*, 6 H. & J. 492.

### § 8. Indentures or other contracts.

#### *Cross-References.*

As evidence in action for harboring apprentice, see post, § 21.

Contracts by infants for services in general, see "Infants," § 49.

(a) Where an infant has agreed to work for a term of years as a consideration for his support, and the contract has been partially and concurrently performed on both sides, he cannot disaffirm his engagement, and sue for the value of the services rendered.—*Wilhelm v. Hardman*, 13 Md. 140. [*Cited and annotated* in 15 L. R. A. 212, 213, on infant's right to repudiate contract for services and sue on quantum meruit; in 15 L. R. A. (N. S.) 320, on parol contracts for services performable within a year, though not so intended.]

### § 9. Assignment of indentures or right to service.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 10. Cancellation of indenture or other termination of apprenticeship.

#### *Cross-Reference.*

See ante, § 7.

(a) Under act 1842, c. 25 (Code, art. 6, § 1), empowering the orphans' court to hear and determine all matters in dispute between masters and apprentices, the court may, on suggestion in writing made by

counsel, take proof and set aside indentures without making the apprentice a formal party.—*Lammott v. Maulsby*, 8 Md. 5.

### § 11. Rights and liabilities of parties.

### § 12.— Construction of indentures and contracts in general.

(a) A covenant in an indenture of apprenticeship to teach an apprentice a particular trade does not bind the master, in every event, to compel the apprentice to learn his trade, but only to act towards him in the matter of coercion as an ordinarily prudent and sensible parent would act towards his own child.—*Wright v. Brown*, 5 Md. 37.

### § 13.— Custody and control of person.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 14.— Support and instruction.

(a) The master is not bound to impart to the apprentice the proper degree of skill at all events, whether or not he has the capacity, but the burden of proof as to want of capacity is thrown upon the master.—*Wright v. Brown*, 5 Md. 37.

### § 15.— Services and earnings.

### § 16.— Misconduct and chastisement.

#### *Cross-Reference.*

Custody and control of person, see ante, § 13.

### § 17.— Restoring apprentice to master.

#### § 17 (a).— Medical attendance.

#### *Cross-Reference.*

See 3 Cent. Dig. Apprent., § 33.

### § 18.— Personal injuries to apprentice.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 19. Actions for breach of covenant.

#### *Cross-Reference.*

Injunction to restrain breach, see "Injunction," §§ 59-62.

(a) A master enlisted his apprentice in the United States army as a substitute for his son, who had been drafted. The apprentice was discharged from the army after a period of service, and sued his former master for loss and injury alleged to have been sustained by having been wrongfully enlisted. *Held*, that the damages were to be assessed for pain inflicted by personal in-

juries and for loss of either time or property, but did not include the sum usually paid for a substitute.—*Gent v. Cole*, 38 Md. 110.

(b) In covenant by an apprentice against his master for failure to teach him the trade of a silversmith in all its branches, defendant may show that it was impossible to teach all the branches in the term, but that the apprentice had attained more than ordinary proficiency in the branches undertaken, and, for the time, had been well and properly taught and advanced in the trade.—*Wright v. Brown*, 5 Md. 37.

(c) In covenant by an apprentice against his master for failure to teach a trade, the incapacity of the apprentice as a matter of defense must be proved by the master.—*Wright v. Brown*, 5 Md. 37.

(d) M. was released from his indenture of apprenticeship to S. by the Court of Oyer and Terminer, and with his own consent and that of R. the court "ordered that M. be, and he is hereby, bound to R. until he is 21 years of age, to learn the trade of a saddler," etc. Held, that M. could not recover in an action of covenant against R. for a breach of this order.—*Mass v. Rogers*, 6 H. & J. 492.

## § 20. Enticing away or harboring apprentice.

### § 21.— Civil liability.

(a) In an action for harboring an apprentice, a knowledge of the apprenticeship by defendant is an indispensable requisite to recovery.—*Ferguson v. Tucker*, 2 H. & G. 182. [*Cited and annotated in 1 L. R. A. (N. S.) 206, on liability for enticing minor from parent's service.*]

(b) A person who knowingly harbors an apprentice is liable in an action brought by the master, without any proof of either a demand or refusal of the return of the apprentice.—*Ferguson v. Tucker*, 2 H. & G. 182. [*Cited and annotated in 1 L. R. A. (N. S.) 206, on liability for enticing minor from parent's service.*]

(c) Where one who has unwittingly hired another's apprentice learns of the former apprenticeship, he is bound to discharge the

apprentice.—*Ferguson v. Tucker*, 2 H. & G. 182. [*Cited and annotated in 1 L. R. A. (N. S.) 206, on liability for enticing minor from parent's service.*]

(d) Although, at the time of hiring an apprentice, defendant may have been ignorant of the apprenticeship, if, after obtaining that information, he continues to harbor him, he is liable in an action brought by the master, without any proof of demand or refusal.—*Ferguson v. Tucker*, 2 H. & G. 182. [*Cited and annotated in 1 L. R. A. (N. S.) 206, on liability for enticing minor from parent's service.*]

(e) Notice that an apprentice had absconded July 1st was published July 4th in a paper taken by defendant, in whose employment the apprentice had been from the first. Plaintiff afterwards applied to defendant for payment for the apprentice's services, informing him that the person harbored was plaintiff's apprentice. Defendant expressed no surprise at the information, nor pretended that he had been ignorant of the apprenticeship. Held, that it was a question for the jury whether defendant knew after the 4th that he was harboring an apprentice.—*Ferguson v. Tucker*, 2 H. & G. 182. [*Cited and annotated in 1 L. R. A. (N. S.) 206, on liability for enticing minor from parent's service.*]

(f) The declaration, in an action for wrongfully harboring an apprentice, must allege the tenor or substance and legal effect of the indenture of apprenticeship.—*Ferguson v. Tucker*, 2 H. & G. 182. [*Cited and annotated in 1 L. R. A. (N. S.) 206, on liability for enticing minor from parent's service.*]

(g) In an action on the case for harboring plaintiff's apprentice, plaintiff, in attempting to plead the indenture of apprenticeship, averred that the person harbored was his apprentice until the date of issuing the writ. It was proved that the contract of apprenticeship had been terminated before that time. Held, that the averment could not be treated as surplusage, and the variance was fatal to a recovery.—*Ferguson v. Tucker*, 2 H. & G. 182. [*Cited and annotated in 1 L. R. A. (N. S.) 206, on liability for enticing minor from parent's service.*]

**§ 22.—Criminal responsibility.**

(a) The provisions of Constitution 1864, abolishing slavery and involuntary servitude, cannot be applied to a free negro lawfully apprenticed, so as to save a person from the statutory criminal liability for assisting and persuading a free negro apprentice to abscond.—*Brown v. State*, 23 Md. 503.

**APPROACHES.***Cross-References.*

As additional servitude in streets, see "Eminent Domain," § 119.  
To bridge, see "Bridges," § 3.  
To trains or stations, see "Carriers," § 286.  
Ways used in work of servants, see "Master and Servant," § 114.

*Annotation.*

1 Words and Phrases, 465, 466.

**APPROPRIATION.***Cross-References.*

Mandamus to compel appropriation by public officers, see "Mandamus," § 100.  
Of goods sold, as transfer of title, see "Sales," §§ 211-213.  
Of money for bridges, see "Bridges," § 11.  
Of payments, see "Payment," § 36.  
Of public funds, see "Counties," § 162; "Municipal Corporations," §§ 889-892; "Schools and School Districts," § 93; "States," §§ 130-133; "Towns," § 49; "United States," §§ 62, 85.  
Of water rights in general, see "Waters and Water Courses," §§ 127-152.  
Of water rights in public lands, see "Waters and Water Courses," §§ 2-33.

*Annotation.*

1 Words and Phrases, 466-468.

**APPROVAL.***Cross-References.*

By architects, arbitrators or others of work done under contract, see "Contracts," §§ 284-292.  
By engineer or other officer of work done under contract for public improvement, see "Municipal Corporations," § 358.  
Mandamus to compel approval of bonds, see "Mandamus," § 73.  
Of account of assignee or trustee in insolvency, see "Insolvency," § 134.  
Of account of trustee in bankruptcy, see "Bankruptcy," § 370.  
Of acts of Legislature, see "Statutes," §§ 26-35.

Of amendment of motion for new trial, see "Criminal Law," § 949.

Of bonds of school text-book publisher, see "Schools and School Districts," § 81.

Of bonds or undertakings in legal proceedings, see "Appeal and Error," §§ 386, 470; "Assignments for Benefit of Creditors," § 207; "Attachment," § 134; "Bail," §§ 15, 61; "Costs," § 123; "Criminal Law," § 1076; "Replevin," § 33.

Of brief of evidence, see "Appeal and Error," § 588.

Of contract for construction of highway, see "Highways," § 113.

Of contract for employment of teacher, see "Schools and School Districts," § 135.

Of contract for public improvements, see "Municipal Corporations," § 342.

Of convict bonds, see "Convicts," § 11.

Of deed by purchaser, see "Vendor and Purchaser," § 155.

Of goods delivered, see "Sales," § 168.

Of incorporation, see "Corporations," §§ 21, 22.

Of liquor dealer's bond, see "Intoxicating Liquors," § 85.

Of municipal ordinances or by-laws in general, see "Municipal Corporations," § 107.

Of municipal ordinances, resolutions or orders for public improvements, see "Municipal Corporations," § 302.

Of report of viewers in proceedings to alter highway, see "Highways," § 72.

Of statutory bond, or bond taken by officer, see "Bonds," § 34.

Of stipulations by court, see "Stipulations," § 5.

Of title of vendor by counsel or other persons, see "Vendor and Purchaser," § 137.

Of verdict by trial court, see "Criminal Law," § 1160.

Sale on approval as transfer of title, see "Sales," § 204.

*Annotation.*

1 Words and Phrases, 474.

**APPURTENANCES.***Cross-References.*

See "Fixtures"; "Party Walls," § 1.

As part of homestead, see "Homestead," § 72.

Construction of deeds, see "Deeds," § 117.

Disposition by will, see "Wills," § 562.

Easements appurtenant or in gross, see "Easements," § 3.

Mortgage of, see "Mortgages," § 133.

Of office, see "Officers," § 79.

Passing by lease, see "Landlord and Tenant," § 124.

Passing on foreclosure of mortgage, see "Mortgages," § 533.

Passing with vessel sold, see "Shipping," § 27.



Performance of contract of sale, see "Vendor and Purchaser," § 162.

To building as covered by insurance policy, see "Insurance," § 163.

Water rights by appropriation and prescription, see "Waters and Water Courses," §§ 127-152.

Water rights in general, see "Waters and Water Courses," §§ 84-126.

Waters as easements and rights appurtenant to other estates, see "Waters and Water Courses," §§ 153-158.

#### *Annotation.*

1 Words and Phrases, 477-487.

### **AQUEDUCTS.**

As subject of mortgage, see "Mortgages," § 10.

## **ARBITRATION AND AWARD.**

### *Scope-Note.*

[INCLUDES submission of controversies, by agreement of the parties thereto, to persons chosen by themselves, for determination; rights, powers, duties, and proceedings of arbitrators so chosen, umpires, etc.; requisites, validity, operation, and effect of such submission and the award thereon; pleading arbitration and award as a defense; and enforcing or setting aside award.]

[EXCLUDES stipulations in contracts, etc., for determination by third persons of questions as to performance, breach, etc. (see "Contracts"; "Partnership"; "Insurance"; "Landlord and Tenant"; and other specific heads); submissions of controversies to courts on agreements as to facts (see "Submission of Controversy"); and reference of issues in actions under provisions of statutes or rules or orders of courts (see "Reference"). For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

#### **I. Submission.**

- § 1. Nature of proceeding.
- § 2. Constitutional and statutory provisions.
- § 3. Matters subject to arbitration.
- § 4. Parties.
- § 5. Agreements to arbitrate.
- § 6. — Requisites and validity.
- § 7. — Construction in general.
- § 8. — Ousting jurisdiction of courts.
- § 9. — Condition precedent to action.
- § 10. — Effect on pending or subsequent action.
- § 11. — Operation as submission.
- § 12. Requisites and validity of submission.
- § 13. Making submission rule or order of court.
- § 14. Arbitration bonds and notes.
- § 15. Amendment or modification.
- § 16. Revocation or setting aside.
- § 17. Construction and operation.
- § 18. — In general.
- § 19. — Parties bound.
- § 20. — Scope of submission.
- § 21. — Effect on pending or subsequent action.
- § 22. Performance or breach.
- § 23. Enforcement.
- § 24. Failure to arbitrate.
- § 25. Liabilities on arbitration bonds and agreements.

**II. Arbitrators and Proceedings.**

- § 26. Appointment.
- § 27. Competency.
- § 28. Oath.
- § 29. Nature and extent of authority.
- § 30. Delegation of authority.
- § 31. Mode and course of proceedings and conduct of hearing.
- § 32. Notice of meetings.
- § 33. Adjournments.
- § 34. Reception of evidence.
- § 35. Concurrence of arbitrators in proceedings and decision.
- § 36. Umpire or third arbitrator.
- § 37. — Necessity for appointment.
- § 38. — Appointment and qualification.
- § 39. — Authority and proceedings.
- § 40. — Decision of controversy.
- § 41. Compensation.
- § 42. Costs.
- § 43. Objections.
- § 44. — To arbitrators or umpire.
- § 45. — For defects or irregularities in proceedings.
- § 46. — Waiver or estoppel.
- § 47. Liabilities of arbitrators.

**III. Award.**

- § 48. Nature and essentials in general.
- § 49. Making and formal requisites.
- § 50. — Time of making.
- § 51. — Mode of making and form.
- § 52. — Contents in general.
- § 53. — Execution and attestation.
- § 54. — Publication and delivery.
- § 55. — Return to court.
- § 56. Sufficiency.
- § 57. — Conformity to submission and completeness.
- § 58. — Mutuality.
- § 59. — Finality.
- § 60. — Certainty.
- § 61. — Consistency and reasonableness.
- § 62. — Amount of award.
- § 63. Mistake or error.
- § 64. Fraud, partiality, or misconduct.
- § 65. Partial invalidity.
- § 66. Presumption.
- § 67. Ratification or repudiation.
- § 68. Objections and exceptions.
- § 69. Amended and supplemental awards.
- § 70. Reconsideration by arbitrators.
- § 71. Recommittal to arbitrators by court.
- § 72. Confirmation or acceptance by court.

**III. Award.**—Continued.

- § 73. Appeal or other proceedings for review.
- § 74. Waiver or repudiation by parties.
- § 75. Impeachment or vacation.
- § 76. — In general.
- § 77. — Motion to set aside or vacate.
- § 78. — Action to set aside or vacate.
- § 79. Collateral attack.
- § 80. Construction and operation in general.
- § 81. Merger and bar of causes of action and defenses.
- § 82. Conclusiveness of adjudication.
- § 83. Performance.
- § 84. Entry of judgment on award.
- § 85. Actions on awards.
- § 86. Pleading and evidence of award as estoppel or defense.
- § 87. Parol evidence as to award.
- § 88. — In general.
- § 89. — Testimony of arbitrators.

*Cross References.*

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| <p>See "Reference"; "Submission of Controversy."</p> <p>Adjustment of loss under insurance policy, see "Insurance," §§ 563-579.</p> <p>Admission in evidence of attorney's opinion on question submitted to him by parties to pending action, see "Evidence," § 213.</p> <p>Admissions in arbitration proceedings, see "Evidence," § 207.</p> <p>Adoption of English statute, see "Common Law," § 12.</p> <p>Appeal from judgment on award as consent judgment, see "Appeal and Error," § 125.</p> <p>Application of general statutes of limitations to actions to set aside or vacate awards, see "Limitation of Actions," § 37.</p> <p>Appraisal of leased premises to fix amount of rent, see "Landlord and Tenant," § 201.</p> <p>Approval or certificate of architects, arbitrators or others of performance of contract, see "Contracts," §§ 284-292.</p> <p>Assessment of compensation for property taken for public use, see "Eminent Domain," § 212.</p> <p>Authority of particular persons to submit to arbitration, see "Attorney and Client," § 83; "Corporations," § 418; "Executors and Administrators," § 112; "Guardian and Ward," § 59; "Husband and Wife," §§ 60, 184; "Principal and Agent," § 112.</p> <p>Between foreign nations, see "International Law," § 13.</p> <p>Claims against District of Columbia, see "District of Columbia," § 35.</p> <p>Claims against estate of decedent, see "Executors and Administrators," § 246.</p> <p>Claims against municipal corporation, see "Municipal Corporations," § 1011.</p> <p>Claims against towns, see "Towns," § 63.</p> <p>Competency of arbitrators as witnesses as to proceedings before them, see "Witnesses," § 74.</p> | <p>Competency of wife as witness in proceedings, see "Witnesses," § 52.</p> <p>Consideration for contract, see "Contracts," § 69.</p> <p>Construction of agreement between owner and principal contractor affecting lien rights of subcontractor, see "Mechanics' Liens," § 114.</p> <p>Contest of will, see "Wills," § 212.</p> <p>Differences between employers and employees, see "Master and Servant," §§ 16, 29.</p> <p>Differences between partners, see "Partnership," § 82.</p> <p>Differences between railroad companies using common tracks, see "Railroads," § 80.</p> <p>Discharge by accord and satisfaction, see "Accord and Satisfaction."</p> <p>Establishment of court of mediation and arbitration, see "Courts," § 42.</p> <p>Foundation for creditors' suit, see "Creditors' Suit," § 10.</p> <p>Fraud, partiality, or misconduct, affecting limitations, see "Limitation of Actions," § 37.</p> <p>In bankruptcy proceedings, see "Bankruptcy," § 251.</p> <p>In proceedings for alteration of school districts, see "Schools and School Districts," §§ 37, 39, 41.</p> <p>Interest on award to tenant for improvements, see "Landlord and Tenant," § 157.</p> <p>Jurisdiction of justice of the peace after change of venue, see "Justices of the Peace," § 73.</p> <p>Liability of person verbally submitting another's debt to arbitration, see "Frauds, Statute of," § 17.</p> <p>Limitations as to actions on awards, see "Limitation of Actions," § 29.</p> <p>Medium of tender of amount due on award, see "Payment," § 10.</p> |
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Minors as parties to submission to arbitration, see "Infants," § 47.  
 Parol award of easement as affected by statute of frauds, see "Frauds, Statute of," § 60.  
 Parties bound by agreement between contractor and subcontractor as to lien, see "Mechanics' Liens," § 277.  
 Partition by arbitration, see "Partition," § 6.  
 Plea of payment of award, see "Payment," § 60.  
 Power of county board to submit claims to arbitration, see "Counties," § 204.  
 Presumption as to jurisdiction of courts, see "Courts," § 35.  
 Presumption that submission was in writing, see "Frauds, Statute of," § 148.  
 Qualification of arbitrators to whom disputes as to performance of contracts are referred, see "Contracts," § 285.  
 Provisions in grant of franchise to street railroad company, see "Municipal Corporations," § 683.  
 Ratification of contract of minor to arbitrate, see "Infants," § 57.

Reference of issues in actions before justices of the peace, see "Justices of the Peace," § 115.  
 Restraining arbitration, see "Injunction," § 28.  
 Review of orders of court on appeal from arbitrators as dependent on finality, see "Appeal and Error," § 69.  
 Settlement of partnership accounts, see "Partnership," § 312.  
 Specific performance of agreement to arbitrate, see "Specific Performance," § 80.  
 Specific performance of award see "Specific Performance," § 81.  
 Under rules or by-laws of Board of Trade, see "Exchanges," § 4.  
 Under treaties, see "Treaties," § 13.  
 Vacation of judgment setting aside judgment confirming award, see "Judgment," § 377.  
 Validity of provision for arbitration in contract of city to purchase property, see "Municipal Corporations," § 221.  
 Waiving right to trial by jury, see "Jury," § 28.

## I. SUBMISSION.

### Cross-References.

Authority of particular persons, see "Attorney and Client," § 83; "Corporations," § 418; "Executors and Administrators," § 112; "Guardian and Ward," § 59; "Husband and Wife," §§ 60, 184; "Principal and Agent," § 112.  
 Construction of agreement between owner and principal contractor affecting lien rights of subcontractors, see "Mechanics' Liens," § 114.  
 Legality of agreements to arbitrate, ousting jurisdiction of courts, see "Contracts," § 127.  
 Parties bound by agreement between contractor and subcontractor as to lien, see "Mechanics' Liens," § 277.  
 Power of county board to submit claims to arbitration, see "Counties," § 204.  
 Presumption as to jurisdiction of courts, see "Courts," § 35.  
 Presumption that submission was in writing, see "Frauds, Statute of," § 148.  
 Specific performance of agreements to arbitrate, see "Specific Performance," § 80.  
 Waiving right to trial by jury, see "Jury," § 28.

### § 1. Nature of proceeding.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 2. Constitutional and statutory provisions.

#### Cross-Reference.

Validity of board of trade by-law for arbitration, see "Exchanges," § 4.

(a) By the statute of 9 & 10 Wm. III., c.

15 (Alex. Brit. Stat. [Coe's Ed.] 838), which is adopted in Maryland, the process of attachment to enforce awards has been extended to all cases, whether the reference is of a suit pending or not.—*Shriver v. State*, 9 G. & J. 1.

### § 3. Matters subject to arbitration.

#### Cross-Reference.

Partition, see "Partition," § 6.

#### Annotation.

Statutory provisions as to, between corporations and employes, see Code, art. 7.

Arbitration and award in suits at law, see Code, art. 75, §§ 46 *et seq.*

Statutory provisions as to matters before the orphans' court, see Code, art. 93, §§ 257 *et seq.*

(a) A bill by the administrator of a deceased partner against the surviving partner for an accounting of the partnership estate was submitted to arbitrators. The bill did not charge that the real estate to be included in the accounting was bought with partnership funds, but, on the contrary, alleged that it was bought after the formation of the partnership out of the private means of the partners. *Held*, that the real estate was not included in the submission.—*Ebert v. Ebert*, 5 Md. 353.

(b) Where the declaration in a case which has been referred to arbitration presents a case within the jurisdiction of a court of

law, it is not essential to support the jurisdiction of the court that the matters in controversy submitted to and decided by the arbitrators were properly subject to common law jurisdiction.—*Caton v. MacTavish*, 10 G. & J. 192.

(c) In submission to arbitration by rule of court, in a suit pending, issues may be submitted, although they are not involved in the suit, under act 1778, c. 21 (Code, art. 75, §§ 46, *et seq.*)—*Shriver v. State*, 9 G. & J. 1.

(d) All matters of litigation in a suit pending, or in the case to be made a rule of court, can be the subjects of arbitration, whether they are claims in favor of plaintiff or of defendant.—*Shriver v. State*, 9 G. & J. 1.

(e) Where the subject of controversy is a freehold not transferable without the solemnity of a conveyance, an award declaring the right of property is void.—*Drane v. Hodges*, 1 H. & McH. 262.

#### § 4. Parties.

##### *Cross-References.*

Parties bound, see post, § 19.  
Minors, see "Infants," § 47.

(a) If a party submit a cause to arbitration under a rule of court, and under an agreement to have the dispute decided without making certain persons parties, who should have been such by the rules of equity, he cannot afterwards object to the award on account of the omission of such parties.—*Cromwell v. Owings*, 6 H. & J. 10.

#### § 5. Agreements to arbitrate.

##### *Cross-References.*

Ratification of contract by minor, see "Infants," § 57.  
Specific performance, see "Specific Performance," § 80.

##### *Annotation.*

As a bar to actions.—15 L. R. A. 142, note.  
Arbitration agreements, their validity and binding force.—47 L. R. A. (N. S.) 337, note.

#### § 6.— Requisites and validity.

##### *Cross-Reference.*

Validity of provisions in contract of city to purchase property, see "Municipal Corporations," § 221.

##### *Annotation.*

Validity of rule of board of trade requiring submission of disputes to.—2 L. R. A. (N. S.) 672, note.

#### § 7.— Construction in general.

##### *Cross-Reference.*

Submission, see post, §§ 18-21.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 8.— Ousting jurisdiction of courts.

##### *Cross-Reference.*

Legality of agreements ousting jurisdiction of courts, see "Contracts," § 127.

(a) An agreement to submit all matters in dispute to arbitration does not oust the jurisdiction of the court on such matters.—*Allegre v. Maryland Ins. Co.*, 6 H. & J. 408, 14 Am. Dec. 289; *Contee v. Dawson*, 2 Bland 264. [Cited and annotated in 15 L. R. A. 142, on agreements to arbitrate; in 15 L. R. A. (N. S.) 1073, on arbitration as condition precedent to action on policy.]

#### § 9.— Condition precedent to action.

#### § 10.— Effect on pending or subsequent action.

#### § 11.— Operation as submission.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 12. Requisites and validity of submission.

##### *Cross-References.*

Waiver of objections, see post, § 46.  
Power or authority of particular persons to submit, see "Attorney and Client," § 83; "Corporations," § 418; "Counties," § 204; "Guardian and Ward," § 59; "Husband and Wife," §§ 60, 184; "Executors and Administrators," § 112; "Principal and Agent," § 112.  
Presumption that submission was in writing, see "Frauds, Statute of," § 148.

(a) Consent to a reference to arbitrators under the statute must be in writing.—*Shriver v. State*, 9 G. & J. 1.

#### § 13. Making submission rule or order of court.

##### *Cross-References.*

Effect as to right to revoke, see post, § 16.  
Presumption as to jurisdiction of courts, see "Courts," § 35.

(a) By St. 9 & 10 Wm. III. c. 15 (Alex. Brit. Stat. [Coe's ed.] 838), which is adopted in Maryland, where the deference is of a matter in which there is no suit pending, the agreement to refer must stipulate that it shall be made a rule of court.—*Shriver v. State*, 9 G. & J. 1.

## § 14. Arbitration bonds and notes.

### *Cross-Reference.*

Liabilities on bonds, see post, § 25.

(a) Where the condition of an arbitration bond is silent as to the time when the award should be rendered, an acknowledgment, in the penal part of the bond, that the obligors bind themselves to pay to the obligee in three months from date, does not limit the power of the arbitrators, and make an award void rendered after three months had elapsed.—*Armstrong v. Robinson*, 5 G. & J. 412.

## § 15. Amendment or modification.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 16. Revocation or setting aside.

### *Cross-Reference.*

Evidence, see post, §§ 77, 85.

### *Annotation.*

Revocation of submission.—2 L. R. A. 180, note.

Right to withdraw from arbitration under a submission by rule or order of court.—43 L. R. A. (N. S.) 711, note.

(a) A submission to an arbitration is not revoked by the death of one of the parties.—*Turner v. Maddox*, 3 Gill 190.

## § 17. Construction and operation.

### *Cross-References.*

Agreement between owner and principal contractor affecting lien rights of subcontractors, see "Mechanics' Liens," § 114.

Waiving right to trial by jury see "Jury," § 28.

## § 18.— In general.

## § 19.— Parties bound.

### *Cross-Reference.*

Agreement between contractor and subcontractor as to lien, see "Mechanics' Liens," § 277.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 20.— Scope of submission.

### *Cross-Reference.*

Conformity of award to submission, see post, § 57.

(a) An arbitration bond recited that the complainant in right of his wife claimed to be entitled to certain portions of the estates of the father and other relatives of his wife's mother, which had come into the

hands of defendant as legal representative of his father, and that the parties had mutually agreed to refer to arbitrators all the differences between them and all said claims. *Held*, that such submission did not include claims which had been adjusted and settled in a previous settlement, made years before.—*Calvert v. Carter*, 18 Md. 73.

(b) On a submission under the statute of 1778 (Code, art. 75, §§ 46, *et seq.*), any matter which might be introduced into the action by amendment of the pleadings is within the submission.—*Ing v. Lewis*, 8 Md. 287.

## § 21.— Effect on pending or subsequent action.

(a) A judgment was entered in assumpsit March 20, 1847, in favor of plaintiff, to be released on payment of such sum as the clerk should ascertain to be due. On August 31, 1847, the clerk filed an award that there was due plaintiff \$946.26, with interest from March 25, 1847, and costs of suit. To such award was annexed the memorandum of an agreement between plaintiff's counsel and the clerk that, if defendant should thereafter show any further credits to which he would be legally entitled, the same should be allowed him. On this judgment a *fi. fa.* was issued in March, 1848; and in May of the same year the parties entered into another reference to arbitrators, with power to appoint an umpire. *Held*, that the power of the clerk as to ascertaining credits ceased from May, 1848.—*Shafer v. Shafer*, 6 Md. 518.

(b) Act 1785, c. 80, § 11 (Code, art. 75, § 48), expressly requires that, when a pending suit is submitted to arbitration, it be continued.—*Shriver v. State*. 9 G. & J. 1.

## § 22. Performance or breach.

## § 23. Enforcement.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 24. Failure to arbitrate.

(a) Where an arbitration has failed by reason of dissension among the arbitrators, the court has no power, unless it be given by statute or an agreement of the parties, to appoint new arbitrators.—*Harryman v. Harryman*, 43 Md. 140.

(b) After a judgment had been rendered, and a fi. fa. issued thereon, the parties submitted the matter in controversy to arbitrators. *Held*, that the failure of the arbitration by reason of the loss of the papers and the award did not give the plaintiff the right to enforce his fi. fa., the defendant not being alone in default.—*Shafer v. Shafer*, 6 Md. 518.

## § 25. Liabilities on arbitration bonds and agreements.

(a) In an action on an arbitration bond, the defendant pleaded that no award was made and delivered by the arbitrators within the time fixed by the bond. *Held*, that a replication that the time to make the award was extended, and that the award was made and delivered within the time so extended, is insufficient.—*Peters v. Johnson*, 3 H. & J. 291.

## II. ARBITRATORS AND PROCEEDINGS.

### *Cross-References.*

Admissions in arbitration proceedings, see "Evidence," § 207.  
Competency of arbitrators as witnesses, see "Witnesses," § 74.  
Competency of wife as witness, see "Witnesses," § 52.  
In bankruptcy proceedings, see "Bankruptcy," § 251.  
Qualifications of arbitrators in cases of disputed performance of contracts, see "Contracts," § 285.

## § 26. Appointment.

### *Cross-References.*

Waiver of objections, see post, § 46.  
Qualification of arbitrators in case of disputed performance of contracts, see "Contracts," § 285.

(a) An award will not be set aside merely because one of the arbitrators failed to set his name upon the agreement for arbitration, in token of his acceptance of the position of arbitrator, as provided by such agreement.—*Witz v. Tregallas*, 82 Md. 351, 33 Atl. 718.

(b) Where parties to a contract by which property of one was to be transferred to the other agreed that certain persons named should value the property, the court cannot substitute persons in the place of those named, and decree a specific performance of the contract, according to the valuation

made by those so substituted.—*Wallingsford v. Wallingsford*, 6 H. & J. 485.

## § 27. Competency.

### *Cross-References.*

Waiver of objections, see post, § 46.  
Qualification of arbitrators in cases of disputed performance of contracts, see "Contracts," § 285.

### *Annotation.*

Right of woman to hold office of arbitrator.—38 L. R. A. 210, note.

(a) Where it is agreed to submit a controversy "to some disinterested third party," and two arbitrators are selected, one of whom is interested, by being a stockholder of one of the parties, their award is void, unless the party seeking to sustain it shows that the adverse party had knowledge of such interest before the award was signed, and either waived the objection or acquiesced in the arbitrators continuing to act.—*Baltimore & O. R. Co. v. Canton Co.*, 70 Md. 405, 17 Atl. 394.

(b) Information that the arbitrator was such stockholder, given to a director of a party a year before, when discussing a different transaction, is not notice to the party.—*Baltimore & O. R. Co. v. Canton Co.*, 70 Md. 405, 17 Atl. 394.

(c) Judges of the orphans' court, as a court, have no authority to act as arbitrators.—*Strite v. Reiff*, 55 Md. 92.

## § 28. Oath.

### *Cross-References.*

Refusal of arbitrators to be sworn as constituting fraud, see post, § 64.  
Waiver of oath or defects therein, see post, § 46.

## § 29. Nature and extent of authority.

### *Cross-Reference.*

Scope of submission, see ante, § 20.

(a) A decision by arbitrators of any matter not referred to them by the articles of submission is beyond their authority, and vitiates the award, unless that part of it which is outside of the submission can be separated from the rest.—*Bullock v. Bergman*, 46 Md. 270.

(b) Where a confession of judgment provided that it was to be released on payment of the amount that a person named should say was due, the person so designated to as-

certain the amount due has no authority to award payment in specific personal property.—*State v. Jones*, 2 Gill 49.

(c) Whether the reference is by rule of court or agreement out of court, the power of the arbitrators depends upon the terms of the rule or the language of the submission, and their proceedings in both cases are the same.—*Shriver v. State*, 9 G. & J. 1.

(d) Arbitrators cannot reserve to themselves the authority to act judicially upon the subject submitted, after their powers are ended by making an award.—*Archer v. Williamson*, 2 H. & G. 62.

### § 30. Delegation of authority.

(a) Where parties agreed that work to be done by the plaintiff should be measured by an agent in the employment of the defendant, whose measurements should be final and conclusive, it is essential to the validity of the award that the agent himself should measure the work.—*Wilson v. York & M. L. R. Co.*, 11 G. & J. 58.

(b) Arbitrators cannot delegate to another any part of their judicial authority, which is personal to themselves, nor refer to another the decision of a point on which they find a difficulty to decide themselves, and much less to the parties to the submission, or either of them.—*Archer v. Williamson*, 2 H. & G. 62.

### § 31. Mode and course of proceedings and conduct of hearing.

#### *Cross-References.*

See ante, § 28.

Rehearing, see post, § 70.

Waiver of objections, see post, § 46.

(a) Arbitrators may proceed without a declaration, if the parties consent.—*Dorsey v. State*, 3 H. & McH. 388.

### § 32. Notice of meetings.

#### *Cross-References.*

See ante, § 31.

Waiver of objections, see post, § 46.

(a) Arbitrators must give the parties concerned notice of the time and place of their meeting on the arbitration; otherwise, the award will be invalid as to the parties not notified.—*Rigden v. Martin*, 6 H. & J. 403; *Bullitt v. Musgrave*, 3 Gill 31; *Emery v. Owings*, 7 Gill 488, 48 Am. Dec. 580; *Young*

*v. Reynolds*, 4 Md. 375; *Wilson v. Boor*, 40 Md. 488.

(b) Where an award allows a claim of one party, which was submitted without notice to and without the knowledge or consent of the other, at the petition of the latter a court of equity will enjoin a suit on the award.—*Sisk v. Garey*, 27 Md. 401.

(c) Where, from the nature of a submission, the judgment of arbitrators may be influenced or enlightened by the adduction of evidence, the parties are entitled to notice of the time and place of their proceedings to investigate the matters submitted to them.—*Bushey v. Culler*, 26 Md. 534.

(d) Though it may generally be necessary to submit the question of notice as a fact for the jury, to entitle one claiming upon an award to recover, it is not so in a case where that necessity is avoided by an express agreement, or where the parties themselves make the appointment of the time and place for hearing before the arbitrators.—*Maryland & D. R. Co. v. Porter*, 19 Md. 458.

(e) The parties are not entitled to notice of the final meeting of the arbitrators, held simply to make up and sign the award.—*Roloson v. Carson*, 8 Md. 208.

(f) Where arbitrators, to whom was referred the value of articles to be purchased by one party of the other, proceeded to make their award without notice to the parties, it was held, that it was an open question of fact to be determined by the jury, whether matters had not been awarded upon, which had not been submitted by the parties.—*Bullitt v. Musgrave*, 3 Gill 31.

(g) In a contract for the construction of a bridge, it was stipulated that an engineer in the employ of the owner should estimate and allow the expense to be paid to the contractor for removing certain water. Held, that the contractor was entitled to notice of the time of making and allowing the estimate, that he might be present, and be heard as to what constituted a fair allowance for the work.—*Wilson v. York & M. L. R. Co.*, 11 G. & J. 58.

### § 33. Adjournments.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.



**§ 34. Reception of evidence.***Cross-References.*

- Waiver of objections, see post, § 46.  
 Competency of arbitrators as witnesses, see "Witnesses," § 74.  
 Competency of wife as witness, see "Witnesses," § 52.  
 Concurrence of arbitrators, and decision, see post, § 35.

(a) Where a submission to arbitration did not provide for the issuance of formal commissions to take testimony, but authorized the taking of depositions before a notary, to be returned to the arbitrators under the hand and seal of the notary, the fact that a deposition was mailed, through mistake of the notary, to one of the parties, instead of directly to the arbitrators, did not authorize the arbitrators to refuse to receive it on its being placed in their hands by the party to whom it was sent, unopened and unaltered, within the time prescribed for the return of the depositions.—*Roberts Bros. v. Consumers' Can Co.*, 102 Md. 362, 62 Atl. 585, 111 Am. St. Rep. 377.

(b) Where the arbitrators, to gain information respecting the matters in dispute, examined the books of one of the parties without notice to, and in the absence of, the other party, and without proof of the correctness of the statements and entries in said books, it was *held*, that such conduct would vitiate and render null their award.—*Emery v. Owings*, 7 Gill 488, 48 Am. Dec. 580.

**§ 35. Concurrence of arbitrators in proceedings and decision.***Cross-Reference.*

Reception of evidence, see ante, § 34.

(a) Where the submission provides that the majority decision shall be the unanimous decision of the arbitrators, the award will not be set aside because it was signed by two of the arbitrators in the absence of a third, who declined to act.—*Witz v. Tregallas*, 82 Md. 351, 33 Atl. 718.

(b) Unless a submission to arbitration provides otherwise, or consent to a majority award is shown, all the arbitrators must concur in the award to render it binding on the parties.—*Harryman v. Harryman*, 43 Md. 140.

**§ 36. Umpire or third arbitrator.***Cross-References.*

- Competency, see ante, § 27.  
 Concurrence in proceedings, and decision, see ante, § 35.  
 Revocation of submission resulting from death of umpire, see ante, § 16.

*Annotation.*

Necessity of notice of appointment of umpire or third arbitrator, and of proceedings before him.—19 L. R. A. (N. S.) 696, note.

**§ 37.—Necessity for appointment.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 38.—Appointment and qualification.***Cross-References.*

- Failure to arbitrate by inability to agree on umpire, see ante, § 24.  
 Waiver of objections, see post, § 46.

(a) Arbitrators authorized to choose an umpire are not bound to defer the choice until a disagreement between them, but may make it before proceeding to act.—*Rigden v. Martin*, 6 H. & J. 403.

**§ 39.—Authority and proceedings.**

(a) An award was set aside, and the case reinstated, where the original arbitrators, after reducing the evidence to writing, disagreed, and chose a third person, to whom the evidence so reduced to writing was delivered, and the award made by him, it not appearing that the party against whom the award was made had notice of the time of meeting of such third person, or was present.—*Selby v. Gibson*, 1 H. & J. 362, note. [Cited and annotated in 19 L. R. A. (N. S.) 696, 697, on necessity of notice of appointment of umpire or third arbitrator, and of proceedings before him.]

(b) After evidence had been submitted to arbitrators, they chose a third, who, with the original arbitrators, had another meeting, of which one party had no notice. *Held*, that the award should be set aside as invalid.—*Goldsmith v. Tilly*, 1 H. & J. 361. [Cited and annotated in 19 L. R. A. (N. S.) 696, 697, on necessity of notice of appointment of umpire or third arbitrator, and of proceedings before him.]

**§ 40.—Decision of controversy.***Cross-Reference.*

Concurrence in proceedings and decision of controversy, see ante, § 35.

(a) Where the submission provides that the majority decision shall be the unanimous decision of the arbitrators, the award will not be set aside because it was signed by two of the arbitrators in the absence of a third, who declined to act.—*Witz v. Tregallas*, 82 Md. 351, 33 Atl. 718.

(b) Unless a submission to arbitration provides otherwise, or consent to a majority award is shown, all the arbitrators must concur in the award to render it binding on the parties.—*Harryman v. Harryman*, 43 Md. 140.

(c) If two arbitrators are appointed with authority to choose a third person in case they should disagree, and it is ordered that an award made by them, or any two of them, shall be final, and the two choose the third before they disagree, an award signed by all three is valid, whether the third acted before or after or without any disagreement on the part of the others.—*Rigden v. Martin*, 6 H. & J. 403.

(d) The arbitrators and the umpire may join in an award.—*Rigden v. Martin*, 6 H. & J. 403.

#### § 41. Compensation.

#### § 42. Costs.

#### Cross-Reference.

On appeal from award, see post, § 73.

#### § 43. Objections.

#### § 44.—To arbitrators or umpire.

#### § 45.—For defects or irregularities in proceedings.

#### § 46.—Waiver or estoppel.

#### § 47. Liabilities of arbitrators.

#### Annotation.

Personal liability of arbitrator chosen by both parties.—42 L. R. A. (N. S.) 277; chosen by one party.—42 L. R. A. (N. S.) 282, notes.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### III. AWARD.

#### Cross-References.

Appeal from judgment on award as consent judgment, see "Appeal and Error," § 125.

Application of general statutes of limitations to actions to set aside or vacate, see "Limitation of Actions," § 37.

Construction and operation as basis for creditors' suit, see "Creditors' Suit," § 10.

Discharge by accord and satisfaction, see "Accord and Satisfaction."

Foundation for creditors' suit, see "Creditors' Suit," § 10.

In bankruptcy proceedings, see "Bankruptcy," § 251.

Interest on award to tenant for improvements, see "Landlord and Tenant," § 157.

Jurisdiction of justice of the peace after change of venue, see "Justices of the Peace," § 73.

Limitations as to actions thereon, see "Limitation of Actions," § 29.

Medium of tender of amount due on award, see "Payment," § 10.

Parol award of easement as affected by statute of frauds, see "Frauds, Statute of," § 60.

Plea of payment, see "Payment," § 60.

Review of orders of court relating thereto as dependent on finality, see "Appeal and Error," § 69.

Specific performance, see "Specific Performance," § 81.

Vacation of judgment setting aside judgment confirming award, see "Judgment," § 377.

Under provisions of treaty, see "Treaties," § 13.

#### § 48. Nature and essentials in general.

(a) Where, by agreement, an appeal is taken from an orphans' court to a judge of a circuit court personally, as an arbitrator, his award on the matters in dispute, though rendered in the form of a judicial order, will be valid.—*State v. McCarty*, 64 Md. 253, 1 Atl. 116.

(b) Where a mortgage recited an indebtedness, the amount of which was to be ascertained on an examination of accounts by two persons chosen by the parties to the mortgage, the ascertainment in accordance therewith was not an award.—*Randall v. Glenn*, 2 Gill 430.

#### § 49. Making and formal requisites.

#### Cross-Reference.

Parol award of easement as affected by statute of frauds, see "Frauds, Statute of," § 60.

#### § 50.—Time of making.

#### Cross-Reference.

Time for return to court, see post, § 55.

#### Annotation.

Awards after revocation.—47 L. R. A. (N. S.), 441, note.

(a) When a time is limited for the completion of an award by arbitrators by the rule of reference, and the parties afterwards, by agreement, change the day, the

court will not entertain an objection that the award was not made within the time first limited.—*Shriver v. State*, 9 G. & J. 1.

(b) The condition of a bond was to perform an award, but the condition was silent as to the time when the award should be rendered. It was held that the penal part of the bond, acknowledging the sum "by us to be paid, three months from the date hereof," did not limit the power of the arbitrators, and so make void an award rendered after the three months had elapsed.—*Armstrong v. Robinson*, 5 G. & J. 412.

(c) Where one of the arbitrators, appointed under a rule of court, had removed from the state, and several years had elapsed, and no award was returned, the court reinstated the cause.—*Price v. Tyson*, 2 G. & J. 475.

#### § 51.— Mode of making and form.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 52.— Contents in general.

(a) Arbitrators are not bound to go into particulars, and assign reasons for their award. Their duty is best discharged by a simple announcement of the result of their investigation.—*Caton v. MacTavish*, 10 G. & J. 192; *Ebert v. Ebert*, 5 Md. 353.

(b) Though notice to the parties is necessary to the validity of an award, it is not essential that it shall appear upon the face of the award that the notice was given.—*Rigden v. Martin*, 6 H. & J. 403.

#### § 53.— Execution and attestation.

(a) Under a submission requiring the award to be returned under the hand and seal of the arbitrators, the omission of a seal is fatal, and invalidates the whole proceedings.—*Price v. Thomas*, 4 Md. 514; *Grove v. Swartz*, 45 Md. 227.

#### § 54.— Publication and delivery.

#### § 55.— Return to court.

##### *Cross-Reference.*

See ante, §§ 25, 60.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 56. Sufficiency.

#### § 57.— Conformity to submission and completeness.

##### *Cross-References.*

Partial invalidity, see post, § 65.

Presumptions, see post, § 66.

Scope of submission, see ante, § 20.

##### *Annotation.*

Right of arbitrators to rehear, or of a party to revoke submission, where award is not coextensive with the submission.—18 L. R. A. (N. S.) 1247, note.

(a) If it appear affirmatively that the parties under their hand and seal have submitted the matters in dispute to arbitration, and the award of the arbitrators is in strict conformity to the articles of submission, the award is not invalid because the arbitrators were informed only verbally of the contents of the agreement of submission, or did not have the paper actually before them in the proceedings in which the award was made.—*Boor v. Wilson*, 48 Md. 305.

(b) Two parties, doing business under a contract with the directors of the penitentiary, entered into an agreement for the settlement of all matters in controversy between them, submitting to arbitrators "all matters appertaining to, or connected with the business in which said parties are engaged together in the penitentiary, under the contract with the directors thereof, and also under the contract between themselves." Held, that an award granting damages based upon matters not included in the partnership transactions and business was not authorized by the terms of the submission.—*Bullock v. Bergman*, 46 Md. 270.

(c) An award for damages actually sustained is within the terms of a submission to arbitration of the amount of damages to be paid by the defendant for any injury or loss the plaintiff may sustain.—*Maryland & D. R. Co. v. Porter*, 19 Md. 458.

(d) Where a pending action for damages was submitted by rule of court, an award in favor of plaintiff for a specific sum and costs to be taxed by the clerk was clearly within the submission.—*Garitee v. Carter*, 16 Md. 309.

(e) Where arbitrators transcend their power, awarding on a matter not submitted, such award cannot be pleaded in bar.—*Carter v. Calvert*, 4 Md. Ch. 199.

(f) Where the condition of a bond was that A. & Co. should comply with an award, and the award was that A. (who signed the bond as A. & Co.) should pay, or cause to be paid by A. & Co., a certain sum in full settlement, etc., this was *held* to be, in effect, an award that A. & Co. should pay; or, regarding the bond as A.'s sole obligation, and as an engagement that he should pay, then the award was within the condition, and, in either case, sufficient.—*Armstrong v. Robinson*, 5 G. & J. 412.

(g) In order that the award of arbitrators shall be valid, it must be an adjudication of all the matters submitted; and an award is void which does not decide all questions submitted.—*Griffith v. Jarrett*, 7 H. & J. 70; *Archer v. Williamson*, 2 H. & G. 62.

(h) If an award, made in pursuance of a submission of the parties, exceeds the subject-matter referred, it does not annul the original contract, which is the subject of the reference, further than the award pursues and is conformable to the terms of the reference.—*Walsh v. Gilmor*, 3 H. & J. 383, 6 Am. Dec. 503.

(i) An award must conform to the submission.—*Walsh v. Gilmor*, 3 H. & J. 383, 6 Am. Dec. 503.

### § 58.—Mutuality.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 59.—Finality.

#### Cross-References.

See ante, § 58; post, § 81.

(a) An award is void that does not make a final determination of all matters submitted; but the reservation of a merely ministerial act does not vitiate.—*Carter v. Calvert*, 4 Md. Ch. 199.

(b) An arbitral award must be final.—*Archer v. Williamson*, 2 H. & G. 62; *Carter v. Calvert*, 4 Md. Ch. 199.

### § 60.—Certainty.

#### Cross-Reference.

See ante, §§ 57, 59.

(a) An award by arbitrators to determine the respective rights of the parties in a fund is sufficiently certain if it gives the proportion coming to each without actually naming

the amounts of the shares.—*Witz v. Treghallas*, 82 Md. 351, 33 Atl. 718.

(b) Where an award, pursuant to a submission of a pending cause by rule of court, decides and adjudges that "there is due and owing by the defendant to the plaintiff the sum of \$500," and "that judgment be rendered by the court in favor of the plaintiff for the sum of \$500, and costs to be taxed by the clerk," there is no ground for the objection of uncertainty.—*Garitee v. Carter*, 16 Md. 309.

(c) An award which directs an account to be taken as to the amount due in a certain matter, but does not state by whom the account is to be taken, nor within what time, nor on what principle, is void for uncertainty.—*Calvert v. Carter*, 6 Md. 135.

(d) An award found a sum due to the complainant by a testator at the time of his death, and that "payments to a considerable amount had been made" by the executor "on account thereof" since the testator's death for which he is entitled to credit, and then awarded "that a fair account be taken between the parties for the balance due, if any, on account," and "that the same be forthwith paid," without stating by whom the account was to be taken or within what time. *Held*, that the award was void for uncertainty.—*Calvert v. Carter*, 6 Md. 135.

(e) When the design of one party was to purchase, and the other to sell, materials, which by the terms of a lease the latter had a right to remove at the end of his term, and an agreement in relation to such purchase was submitted to arbitrators, if purchase money is to be paid, it should appear what were the articles appraised, so that the vendee might obtain title; and where some of the articles were particularized, and some were not, but were included under an "et cetera," the award is uncertain and void.—*Bullitt v. Musgrave*, 3 Gill 31.

(f) Where a bill against husband and wife, by legatees and devisees, alleged that the wife while sole, and the husband after the marriage, were guardians of the complainants, and as such received funds belonging to them, and the matters in controversy were by consent referred to an arbi-

trator, who reported that the husband and wife pay a certain sum in gross, without stating an account, to each of the complainants, it was *held*, that the award was void for uncertainty in not showing on account of which of the defendants the indebtedness accrued, and in what character.—*Dorsey v. Dorsey*, 11 G. & J. 299.

(g) A claim against a wife for funds received by her as executrix and guardian before her marriage, and a claim against her husband for funds received by him as guardian, were referred to arbitrators, who awarded that the husband and wife pay a gross sum to each claimant. *Held*, that the award should be set aside for uncertainty, as it did not specify on account of which of the defendants the indebtedness accrued, or in what capacity they were indebted.—*Crawford v. Berry*, 11 G. & J. 310.

(h) Where an award directed that the defendant should give an indorser, "as per agreement submitted to the arbitrators and acknowledged by the parties," although it may be susceptible of being made certain and good, by reference to the agreement to which it relates, if there be no sufficient averment in the declaration by which the defect is cured, both the declaration and award are bad in that particular, and an objection to the uncertainty of the award is well taken.—*Walsh v. Gilmor*, 3 H. & J. 383, 6 Am. Dec. 502.

#### § 61.—Consistency and reasonableness.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 62.—Amount of award.

*Cross-Reference.*

Excessive damages ground for relief, see post, § 64.

(a) An award will not be set aside or impeached for overvaluation in the absence of fraud, accident, or mistake.—*Baltimore & O. R. Co. v. Canton Co.*, 70 Md. 405, 17 Atl. 394.

#### § 63. Mistake or error.

*Cross-References.*

See post, § 64.

Partial invalidity, see post, § 65.

(a) The unauthorized refusal of arbitrators to consider depositions which consti-

tute the only evidence in behalf of one party on a vital point of the question in dispute constitutes such a mistake on their part as to authorize the setting aside of the award.—*Roberts Bros. v. Consumers' Can Co.*, 102 Md. 362, 62 Atl. 585, 111 Am. St. Rep. 377.

(b) An award will not be set aside for any mistake of law or fact not appearing on its face.—*Goldsmith v. Tilly*, 1 H. & J. 361; *Witz v. Tregallas*, 82 Md. 351, 33 Atl. 718.

(c) An award of arbitrators will not be set aside because the arbitrators have drawn incorrect conclusions from the facts before them.—*Cromwell v. Owings*, 6 H. & J. 10; *Ebert v. Ebert*, 5 Md. 353; *Roloson v. Carson*, 8 Md. 208.

(d) An award of arbitrators cannot be impeached for mistake of fact.—*Cromwell v. Owings*, 6 H. & J. 10.

(e) Where arbitrators intend to decide according to law, if they clearly mistake the law, the award may be set aside.—*Hewitt v. State*, 6 H. & J. 95.

(f) Where arbitrators, in their award, after stating the facts upon which they reached their conclusions as to the ownership of the property in controversy, drew a wrong inference from the facts, and erroneously decided that the ownership was in one of the parties, the award was void.—*Oliver v. Heap*, 2 H. & McH. 477.

#### § 64. Fraud, partiality, or misconduct.

*Cross-References.*

See ante, § 63; post, § 76.

Affecting limitations, see "Limitation of Actions," § 37.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 65. Partial invalidity.

(a) In order that the part of an award which is good may be given effect, the separability of the bad from the good must be apparent on the face of the award.—*Bullock v. Bergman*, 46 Md. 270.

(b) An award of a sum in solido, embracing matters not within the terms of the submission, and containing nothing to show how the vitiated part can be separated from the rest, is properly set aside.—*Bullock v. Bergman*, 46 Md. 270.

(c) A provision in an award "for the costs of the reference and award," not within the terms of the submission, does not vitiate an award good in other respects.—*Garitee v. Carter*, 16 Md. 309.

(d) An award which goes beyond the submission, and decides matters not embraced in it, is valid as to the matters submitted, and void as to the excess.—*Cromwell v. Owings*, 6 H. & J. 10; *Caton v. MacTavish*, 10 G. & J. 192; *Ebert v. Ebert*, 5 Md. 353; *Garitee v. Carter*, 16 Md. 309.

(e) Where matters not submitted are included in an award, which cannot be separated from the matters referred, the award is void, unless subsequently ratified by the parties.—*Bullitt v. Musgrave*, 3 Gill 31.

(f) An award may be good in part and void in part.—*Caton v. MacTavish*, 10 G. & J. 192.

(g) If part only of a subject-matter is referred to and awarded upon by arbitrators, the party is at liberty to comply with the award, without also complying with all the terms of the original agreement.—*Walsh v. Gilmor*, 3 H. & J. 383, 6 Am. Dec. 503.

## § 66. Presumptions.

### *Cross-References.*

Burden of proof of fraud, see post, § 76.  
On appeal, see post, § 73.

(a) Where the parties to an arbitration have had a full and fair hearing, the award of the arbitrators will be expounded favorably, and every reasonable intendment will be made in its support.—*Roberts Bros. v. Consumers' Can Co.*, 102 Md. 362, 62 Atl. 585, 111 Am. St. Rep. 377.

(b) The burden of proof is on the person attempting to show that the award was not co-extensive with the submission.—*Witz v. Tregallas*, 82 Md. 351, 33 Atl. 718.

(c) Where an agreement to submit to arbitration was "for the purpose of ascertaining the amount of damages or compensation to be paid by the defendant for any injury or loss the plaintiff may sustain," an award for damages actually sustained will be considered within the terms of the submission.—*Maryland & D. R. Co. v. Porter*, 19 Md. 458.

(d) Everything is to be presumed, and every reasonable intendment made, in favor of an award.—*Archer v. Williamson*, 2 H. & G. 62; *Roloson v. Carson*, 8 Md. 208.

(e) The legal presumption, unless the contrary appears, is that arbitrators decide all the matters which are submitted to them, and only those.—*Caton v. MacTavish*, 10 G. & J. 192; *Ebert v. Ebert*, 5 Md. 353.

(f) Where it appears that there was a stipulation to enlarge the time for making an award, but the record does not show when the stipulation was made, it will be presumed that it was made before the rule of court; and the whole agreement, embracing the stipulation to extend the time, is to be considered as constituting a portion of the rule.—*Shriver v. State*, 9 G. & J. 1.

(g) An undated indorsement on the back of the award, signed by all the arbitrators, will be presumed to have been written at the time the award was made, and to be a part thereof.—*Griffith v. Jarrett*, 7 H. & J. 70.

## § 67. Ratification or repudiation.

### *Cross-Reference.*

Repudiation by parties, see post, § 74.

### *Annotation.*

When award set aside.—11 L. R. A. 623, note.

(a) A party who accepts the benefits of an award cannot afterwards deny its validity. *Sisson v. Baltimore*, 51 Md. 83.

(b) Where an award of arbitrators appointed by the orphans' court was void because of the failure of the court to ratify it, the defect was not cured by a writing attached to the award, whereby the parties waived all objections, and consented that it be ratified by the court, when such writing was signed by one of the parties by an agent, and there was no proof of the agent's authority.—*Dement v. Stonestreet*, 1 Md. 116.

## § 68. Objections and exceptions.

### *Cross-Reference.*

See post, § 73.

(a) A party to an arbitration does not waive his right to assail the award by not withdrawing his submission on refusal of the arbitrators to receive or consider depo-

sitions on his behalf, where, by positive and timely protest against their action, he makes plain his intention not to waive his rights in the premises.—*Roberts Bros. v. Consumers' Can Co.*, 102 Md. 362, 62 Atl. 585, 111 Am. St. Rep. 337.

(b) A party may except to the confirmation of an award on the ground of usury in the computation, though no such defense was made before the arbitrator.—*Woods v. Matchett*, 47 Md. 390.

(c) Under a statutory submission no objections may be made to the award other than those specified in the statute or such as appear on the face of the award.—*Northern Cen. Ry. Co. v. Canton Co.*, 24 Md. 500.

(d) Exceptions to an award must be for matter appearing on the face thereof, and nothing deors the award can be urged against it.—*Cromwell v. Owings*, 6 H. & J. 10; *Rigden v. Martin*, Id. 403; *Ebert v. Ebert*, 5 Md. 353; *Ing v. Lewis*, 8 Md. 287.

(e) Where the record shows that exceptions to an award were filed in the case "by the counsel for the defendant," it is sufficient to show that they were genuine, though they were not signed by counsel or entitled as of the case.—*Johnston v. George*, 6 Md. 452.

(f) Exceptions to the regularity of an award, being analogous to a motion in arrest of judgment, are not within act 1825, c. 117 (Code, art. 5, § 9), but bring up for review the regularity of the award; and errors apparent on its face may be inquired into, though not particularly specified.—*Price v. Thomas*, 4 Md. 514.

(g) Exceptions to an award for defects apparent upon its face need not be verified by the oath of the exceptioner, nor signed by his counsel. If they appear to have been filed by the counsel in the cause, it is sufficient.—*Price v. Thomas*, 4 Md. 514.

#### § 69. Amended and supplemental awards.

##### *Cross-Reference.*

See post, § 80.

#### § 70. Reconsideration by arbitrators.

##### *Annotation.*

Right of arbitrators to rehear or of a party to revoke submission, where award is not coextensive with submission.—18 L. R. A. (N. S.) 1247, note.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 71. Recommittal to arbitrators by court.

(a) The court has no power after setting aside an award of arbitrators to refer the matter back to the same arbitrators, unless such power is given by the terms of the submission.—*Harryman v. Harryman*, 43 Md. 140.

(b) A clause, in a submission to arbitrators, providing that "in the event of either of the parties disputing the validity of the award, or moving the court to set it, or any part of it, aside, the court shall have power to remit the matters referred, or any of them, to the reconsideration and determination of the arbitrators making such award," is unavailing, where the arbitrators do not agree, as it would be utterly futile to remit the matters of reference to the same arbitrators, when it is apparent that they do not agree, and that the reference must ultimately fail.—*Harryman v. Harryman*, 43 Md. 140.

#### § 72. Confirmation or acceptance by court.

##### *Cross-References.*

See ante, § 66.

Vacation of judgment setting aside judgment confirming award, see "Judgment," § 377.

(a) When arbitrators appointed under an order of the orphans' court have made their decision, and have reduced it to writing, with their names and seals regularly affixed, it is still void as an award if it is not ratified by the court.—*Dement v. Stonestreet*, 1 Md. 116.

#### § 73. Appeal or other proceedings for review.

##### *Cross-References.*

Appeal from judgment on award as consent judgment, see "Appeal and Error," § 125.

Review of orders of court relating to awards as dependent on finality, see "Appeal and Error," § 69.

(a) Appeal will not lie from an award of judges of the orphans' court, sitting as arbitrators; for, if the submission was made to them as a court, the award was final, and, if submitted to them as individuals, it was a matter of ordinary arbitration and award, from which there is no appeal.—*Strite v. Reiff*, 55 Md. 92.

(b) Since exceptions to an award are analogous to a motion in arrest of judgment, and are not within the operation of act 1825, c. 117 (Code, art. 5, § 9), they may be inquired into by the Court of Appeals, though not raised and decided in the court below.—*Grove v. Swartz*, 45 Md. 227.

(c) Where the decision of a county court setting aside an award was reversed, and there was no objection to the award on its face, nor anything in the record to impeach it, the Court of Appeals entered judgment in conformity to it.—*State v. Stewart*, 12 G. & J. 456.

#### § 74. Waiver or repudiation by parties. *Cross-Reference.*

Ratification or repudiation, see ante, § 67.

(a) A party who accepts the benefits of an award cannot afterwards deny its validity.—*Sisson v. Baltimore*, 51 Md. 83.

(b) Where an award of arbitrators appointed by the orphans' court was void because of the failure of the court to ratify it, the defect was not cured by a writing attached to the award, whereby the parties waived all objections, and consented that it be ratified by the court, when such writing was signed by one of the parties by an agent, and there was no proof of the agent's authority.—*Dement v. Stonestreet*, 1 Md. 116.

#### § 75. Impeachment or vacation.

##### § 76.— In general.

##### *Cross-References.*

Fraud, partiality, or misconduct as grounds therefor, see ante, § 64.

For want of or defects in oath of arbitrators, see ante, § 28.

Mistake or error as grounds therefor, see ante, § 63.

Testimony of arbitrators, see post, § 89.

(a) An award of arbitrators having been declared void, the agreement of submission is no longer a binding obligation.—*Calvert v. Carter*, 18 Md. 73.

(b) An award specified will be set aside on caveat only for reasons in the Act of Assembly or apparent on the face of the award.—*Dorsey v. Jeoffray*, 3 H. & McH. 121.

#### § 77.— Motion to set aside or vacate.

##### *Cross-Reference.*

Treatment of answer in suit on award as in the nature of a motion to vacate, see post, § 85.

(a) To set aside an award for matter dehors, as corruption or misbehavior on the part of the arbitrators, or other charges to be sustained by evidence, the motion must be supported by affidavits.—*Cromwell v. Owings*, 6 H. & J. 10; *Rigden v. Martin*, Id. 403.

(b) If an award is silent as to notice of hearing by the arbitrators, it can only be impeached by application, supported by affidavit of want of notice, to set it aside.—*Rigden v. Martin*, 6 H. & J. 403.

(c) An award can be attacked for matters outside it only on motion, supported by affidavit.—*Cromwell v. Owens*, 6 H. & J. 10.

#### § 78.— Action to set aside or vacate.

##### *Cross-Reference.*

Application of general statute of limitations, see "Limitation of Actions," § 37.

(a) A delay of 4½ months after the award is signed before bringing suit to set it aside is not so unreasonable as to deprive the party of the right to relief, where it has gained nothing and the other party has lost nothing thereby, and no other remedy is available.—*Baltimore & O. R. Co. v. Canton Co. of Baltimore*, 70 Md. 405, 17 Atl. 394.

#### § 79. Collateral attack.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 80. Construction and operation in general.

##### *Cross-References.*

See ante, § 66.

Basis for creditors' suit, see "Creditors' Suit," § 10.

(a) An award should be liberally and favorably construed, according to the intent of the parties, and, if possible, so as to give it effect.—*Lewis v. Burgess*, 5 Gill 129;



Garitee v. Carter, 16 Md. 309; Maryland & D. R. Co. v. Porter, 19 Md. 458.

(b) Where, by an arbitration bond, the arbitrators were to determine of and concerning the rent that ought to be paid by A. to B. for her dower in her deceased husband's estate, then owned and possessed by A., and the arbitrators awarded that A. should pay to B. annually the sum of \$53.33 for her dower, but there was nothing in the language of either the bond or the award to restrict the application of either to the time past or to the future, it was *held* that the legal effect would be to place each of the parties in the condition in which they would have been had a lease been executed, at the annual rent named by the referees, of all the dower interest of B., commencing at the period when A. first had the possession of the land incumbered with the dower right of the appellant.—Lewis v. Burgess, 5 Gill 129.

### § 81. Merger and bar of causes of action and defenses.

(a) A valid award merges the original demand, and bars an action upon the matters contained in the submission.—Randall v. Glenn, 2 Gill 430.

(b) In an action on a bond against the administrator of the surety, a judgment on an award against the principal in a former action, brought by the plaintiff against the principal, is not evidence.—Beall v. Beck, 3 H. & McH. 242.

### § 82. Conclusiveness of adjudication.

#### Cross-References.

See ante, §§ 3, 81.

Collateral attack, see ante, § 79.

Binding effect on surety on arbitration bond, see ante, § 25.

Presumptions, see ante, § 66.

(a) Where the parties to an arbitration have had a full and fair hearing, the court will not consider the merits of their dispute and review the findings of law or fact made by the arbitrators, nor substitute its opinion or judgment for theirs, but will require the parties to abide by the award.—Roberts Bros. v. Consumers' Can Co., 102 Md. 362, 62 Atl. 585, 111 Am. St. Rep. 377.

(b) Where one agreed to sell ice of a certain quality to a railroad company subject

to the approval of an agent of the company, the latter's judgment is conclusive between the parties, though erroneous or unreasonable, unless the result of fraud or bad faith.—Lynn v. Baltimore & O. R. Co., 60 Md. 404, 45 Am. Rep. 741. [*Cited and annotated* in 17 L. R. A. 209, on effect of agreement to satisfactorily perform undertaking; in 33 L. R. A. (N. S.) 839, on degree of certainty necessary to establish fraud in civil action.]

(c) Under a contract for the construction of a building, the value of extra work was to be determined by the architect, but the owner refused to accept his estimate, and, by consent, the contract was referred to another, who awarded the contractor a less sum than was awarded by the architect. *Held*, that the contractor could not recover the difference between the first and last award, as the last award was conclusive upon both parties.—Sisson v. City of Baltimore, 51 Md. 83.

(d) An award can only be impeached for mistake, corruption, partiality, or gross misbehavior.—Goldsmith v. Tilly, 1 H. & J. 361; Ing v. State, 8 Md. 287.

### § 83. Performance.

#### Cross-References.

Specific performance, see "Specific Performance," § 81.

Discharge by accord and satisfaction, see "Accord and Satisfaction," § 8.

Medium of tender of amount due, see "Payment," § 10.

(a) If, upon reference by rule of court, the award be for the payment of money, and judgment is entered upon it, execution to enforce payment issues as upon a judgment or verdict; and, if the award is for any other matter or for a conveyance, it may be enforced by attachment.—Caton v. MacTavish, 10 G. & J. 192.

(b) Act 1778, c. 21 (Code, art. 75, § 46), relating to arbitration and award, by the eighth section of which the courts were required to give judgment upon the award, in any cause instituted or to be instituted, and to issue execution as upon verdict, confession, or nonsuit, is remedial, and entitled to liberal interpretation; and therefore, if an award under that act direct a matter for

the enforcement of which the usual writ will not avail, attachment to enforce the award must be resorted to, as was necessary before the act was passed.—*Shriver v. State*, 9 G. & J. 1.

(c) The statute of 9 & 10 Wm. III. c. 15 (Alex. Brit. Stat. [Coe's ed.] 838), which extends the benefit of the summary process of attachment to enforce awards to all cases in which the submission was made a rule of court by agreement, without the formalities of a suit, was received and adopted in Maryland.—*Shriver v. State*, 9 G. & J. 1.

(d) Where parties to a contract of sale submitted the differences arising out of it to arbitration, one of them can recover damages for noncompliance with the award only so far as the latter conforms to the submission.—*Walsh v. Gilmor*, 3 H. & J. 383, 6 Am. Dec. 503.

(e) If an action is referred to arbitration, under St. 9 & 10 Wm. III. (Alex. Brit. Stat. [Coe's ed.] 838), and the award made in pursuance thereof is not performed, a compliance therewith cannot be enforced by judgment on the award and execution, but must be by an attachment for a contempt.—*West v. Stigar*, 4 H. & McH. 490.

#### § 84. Entry of judgment on award.

##### *Cross-References.*

See ante, §§ 72, 78.

Effect on conclusiveness of award, see ante, § 82.

Jurisdiction of justice of the peace after change of venue, see "Justices of the Peace," § 73.

(a) Where plaintiff relies on a submission to arbitrators and their award as ground for his cause of action, he must plead both the agreement to submit and the award, to render evidence thereof admissible.—*Ogle v. Tayloe*, 49 Md. 158.

(b) Under act 1785, c. 80, § 11 (Code, art. 75, § 48), providing that all cases referred by consent shall be continued until award is returned, and, if the death of either party occurs before an award is returned, such cause shall not abate, the court has power to render judgment on award returned under such act, notwithstanding the death of either of the parties to the cause referred.—*Turner v. Maddox*, 3 Gill 190.

(c) Act 1778, c. 21, § 8 (Code, art. 75, § 46), requiring courts to give judgment on award made in any instituted cause, applies to an award made under a submission that included other matters than those involved in the particular cause that was instituted, and in which the order of reference was made.—*Shriver v. State*, 9 G. & J. 1.

(d) By act 1778, c. 21, § 8 (Code, art. 75, § 46), judgment may be entered, without any preliminary action, on all awards, when returned and ratified as the act provides.—*Shriver v. State*, 9 G. & J. 1.

(e) If the amount of an award is not sufficient to support the jurisdiction of the court at the time of the commencement of an action, the cause will not be retained and judgment entered on the ground that the interest, when added to the award, gives a sufficient sum to support the jurisdiction.—*Harris v. Dorsey*, 1 H. & J. 416.

#### § 85. Actions on awards.

##### *Cross-References.*

Counterclaim to action, see ante, § 81.

Limitations, see "Limitation of Actions," § 29.

Plea of payment, see "Payment," § 60.

Parol evidence, see post, §§ 88, 89.

(a) In an action on an award against the administrator of an estate, a declaration which seeks to charge the administrator individually, and not as administrator, is demurrable.—*James v. Lawrence*, 7 H. & J. 73.

(b) In arbitration proceedings between an administratrix and a creditor of the estate, the award was against the administratrix in her individual capacity. *Held*, that the creditor could not maintain an action on the award against another who succeeded the administratrix as administrator of the estate.—*James v. Lawrence*, 7 H. & J. 73.

(c) Where an award has been made for damages, with interest and costs, the plaintiff cannot, in an action upon the award, sue for damages alone, and ignore the interest and costs, as it would be a division of causes of action.—*James v. Lawrence*, 7 H. & J. 73.

(d) In an action to enforce an award, it is not a sufficient replication to the answer, stating that the award was made after the day specified in the bond, that the award was made within a time extended by an in-

dorsement on the bond, signed by defendant only.—*Peters v. Johnson*, 3 H. & J. 291.

### § 86. Pleading and evidence of award as estoppel or defense.

#### *Cross-Reference.*

Exhibits in case of written award, see "Pleading," § 308.

(a) Under act 1856, c. 112 (Code, art. 75, § 24, sub-sec. 41), if it be intended to rely upon the arbitrament and award, it is necessary to plead it specially. Evidence tending to prove it cannot be admitted under a general plea of "Not indebted" in defense against assumpsit on a promissory note.—*Yingling v. Kohlhas*, 18 Md. 148.

(b) In an action of trespass for breaking a certain close, an award of arbitrators is not admissible to prove the location of plaintiff's land.—*Drane v. Hodges*, 1 H. & McH. 262.

### § 87. Parol evidence as to award.

### § 88.—In general.

(a) In an action to set aside an award in solido, embracing items of damages not included in the terms of the submission, evidence is not admissible to show the items taken by the arbitrators to make up the gross amount of the award, nor to show in what manner the conclusion of the arbitrators was reached.—*Bullock v. Bergman*, 46 Md. 270.

(b) Where appraisers made a valuation of property of one party to be taken by another, evidence is admissible of a parol agreement between the parties that payment by the one taking the property should be made by paying off the other's debts.—*McCreary v. McCreary*, 5 G. & J. 147.

### § 89.—Testimony of arbitrators.

#### *Cross-Reference.*

Competency of arbitrators as witnesses as to proceedings before them, see "Witnesses," § 74.

(a) Where a cause had been referred to arbitrators, with power to decide all matters in controversy between the plaintiff and the defendant, and the arbitrators had returned an award, subject to no exception upon the face of it, upon a motion to set aside the award the court will not receive parol proof to control or alter the terms of the submission, nor the depositions of the

arbitrators, to show the character of the items of which the award was composed, or that they had decided upon a matter finally adjudicated before the reference, and so not within the submission.—*State v. Stewart*, 12 G. & J. 456.

## ARBITRATORS.

#### *Cross-Reference.*

See "Arbitration and Award."

#### *Annotation.*

1 Words and Phrases, 489, 490.

## ARCHITECTS.

#### *Cross-References.*

Admissions by subordinate, see "Evidence," § 242.

Approval or certificate of architects, arbitrators, or others of performance of contract, see "Contracts," §§ 284-292.

As public officer, see "Officers," § 1.

Construction of contract for compensation, see "Contracts," § 229.

Contracts with, see "Contracts," § 196.

Custom as fixing architect's fees, see "Customs and Usages," §§ 7, 12, 17.

Liability for mistakes, see "Principal and Agent," § 61.

Liability of owner for injuries arising from defects in plans and specifications of building in process of erection by independent contractor, see "Master and Servant," § 320.

Liability to employer for negligence, see "Master and Servant," § 63.

License taxes, see "Licenses," § 11.

Liens for services, see "Mechanics' Liens," § 36.

Power of committee for construction of court house to employ architect, see "Counties," § 114.

Power of municipality to employ, see "Municipal Corporations," § 214.

Property rights in plans and specifications, see "Literary Property," §§ 3, 5.

Sufficiency of performance of contracts by, see "Contracts," § 280.

#### *Annotation.*

1 Words and Phrases, 490, 491.

## ARGUMENTATIVENESS.

#### *Cross-References.*

In allegations of indictment or information, see "Indictment and Information," § 70.

In allegations of pleading, see "Pleading," § 17.

In instructions, see "Criminal Law," § 807; "Trial," § 240.

Of plea in equity, see "Equity," § 166.

## ARGUMENT OF COUNSEL.

#### *Cross-References.*

In civil actions in general, see "Appeal and Error," §§ 207, 261, 290, 925, 972, 1060; "Trial," §§ 106-133.

In criminal prosecutions, see "Criminal Law," §§ 699-730, 919, 1037, 1055, 1154.  
 False statements of counsel as libelous, see "Libel and Slander," § 38.  
 On appeal or writ of error, in civil actions, see "Appeal and Error," §§ 823-825.  
 On hearing on motion for new trial, see "Criminal Law," § 959.  
 On motions in general, see "Motions," § 36.  
 On requests for instructions, see "Trial," § 265.  
 Rulings on argument of counsel ground for new trial, see "New Trial," § 36.

## ARID LANDS.

### Cross-References.

See "Public Lands," § 37.  
 Irrigation, see "Waters and Water Courses," §§ 213-266.

## ARMS.

### Cross-References.

See "Weapons."  
 State arms, see "States," § 23.

### Annotation.

1 Words and Phrases, 497.

## ARMY AND NAVY.

### Scope-Note.

[INCLUDES the land and naval forces of the general government, militia called into its service, and volunteers, as well as the regular army and navy; constitutional and statutory provisions relating thereto; organization and discipline thereof; appointment, discharge, resignation, and dismissal of officers of the army or navy, and their rank, rights, powers, duties and liabilities; enlistment, conscription, and discharge of soldiers, sailors, marines, etc., their pay and other rights, their duties and liabilities, and aid or relief to them after discharge, and to their families, etc.; relation of the military forces to the civil authorities in general; and offenses against military law or regulations governing the service, and courts of inquiry, courts-martial, and other courts administering such laws or regulations.

[EXCLUDES militia not called into the service of the general government (see "Militia"); military bounties (see "Bounties") and pensions (see "Pensions"); and employment and operations of the army and navy in war, and their subjection to martial law (see "War"). For complete list of matters excluded, see cross-references, post.]

### Analysis.

- § 1. Power to maintain, regulate, and control.
- § 2. Sources and authority of military law.
- § 3. Relation of military to civil authority.
- § 4. Establishment and organization.
- § 5. Persons in military or naval service in general.
- § 5½. Militia called into service of United States.
- § 6. Officers.
- § 7. — Appointment and promotion.
- § 8. — Rank and grade.
- § 9. — Resignation.
- § 10. — Retirement.
- § 11. — Discharge or dismissal.
- § 12. — Reinstatement.
- § 13. — Pay and allowances.
- § 14. — Rights and privileges.
- § 15. — Authority and duties.
- § 16. Military and naval academies and cadets.
- § 17. Enlistment.
- § 18. — In general.
- § 19. — Minors.

- § 20. Compulsory service and drafts.
- § 21. Enlisted men.
- § 22. — Discharge.
- § 23. — Pay and allowances.
- § 24. — Rights and privileges.
- § 25. — Duties.
- § 26. Paymasters, pursers, disbursing officers, and agents.
- § 27. Civilian employes and contractors.
- § 28. Forts and military posts.
- § 29. Vessels and navy yards.
- § 30. Medals of honor.
- § 31. Civil status of persons in military or naval service.
- § 32. Civil liabilities of persons in military or naval service.
- § 33. — To one another.
- § 34. — To civilians.
- § 35. Offenses by persons in military or naval service.
- § 36. — In general.
- § 37. — Mutiny.
- § 38. — Desertion.
- § 39. — Minor violations of articles of war, or of army or navy regulations.
- § 40. Offenses by persons not in military or naval service.
- § 41. Courts of inquiry.
- § 42. Courts-martial.
- § 43. — Creation, constitution, and organization.
- § 44. — Jurisdiction.
- § 45. — Effect of acquittal in state court.
- § 46. — Former punishment for same offense.
- § 47. — Proceedings and review.
- § 48. — Sentence, approval, and execution.
- § 49. — Conclusiveness of sentence.
- § 50. Aid or relief to families of persons in military or naval service.
- § 51. Aid or relief to discharged soldiers, sailors, or marines.
- § 52. Soldiers' homes.
- § 53. Burial of indigents.
- § 54. Battlefields and monuments.

#### *Cross-References.*

See "Militia"; "Pensions"; "War."

Acceptance of commission in army as forfeiture of municipal office, see "Municipal Corporations," § 142.

Certificate of discharge from army as evidence of character in criminal prosecution, see "Criminal Law," § 377.

Certiorari to review acts of military board, see "Certiorari," § 24.

Cession of land in Indian country in aid of military road, see "Indians," § 12.

Execution of nuncupative wills by persons in military service, see "Wills," § 189.

Exemption of Confederate soldiers from license taxes, see "Licenses," § 19.

Exemption of property of persons in military service, see "Exemptions," § 23.

Grant of state lands to discharged soldiers, see "Public Lands," § 153.

Habeas corpus to obtain discharge from enlistment, see "Habeas Corpus," §§ 13, 16, 54.

Habeas corpus to obtain release of officer, see "Habeas Corpus," § 25.

Martial law ground for continuance, see "Criminal Law," § 591.

Memorial or Decoration Day as holiday, see "Holidays."

Military reservations, see "Public Lands," § 50.

Preference of discharged soldiers, sailors and marines in appointments to office, see "Municipal Corporations," § 132; "Officers," § 10.

Preference of discharged soldiers, sailors and marines in removal from office, see "Municipal Corporations," § 157; "Officers," § 68.  
Provisional courts under military authority, see "Courts," § 442.  
Right to vote, see "Elections," § 74.

Service as affecting domicile, see "Domicile," § 5.  
Services as mode of acquiring legal settlement, see "Paupers," § 19.  
Taxation to pay military bounties, see "Taxation," § 38.

## NOTE.

Few Maryland cases touching this subject are to be found in the Maryland Reports. Nevertheless, the titles and sub-titles are given as they appear in the American Digest Key Number classification, so that the investigator may at one time accomplish the double purpose of learning whether a given point has been passed upon by the Maryland courts and also ascertain the particular place in the American Digest System where all state and federal cases upon the point will be found collected.

References to valuable notes in the L. R. A. and copious cross-references will also be found throughout the title.

### § 1. Power to maintain, regulate, and control.

#### Annotation.

Use of municipal fund to provide soldiers.—14 L. R. A. 476, note.

### § 2. Sources and authority of military law.

### § 3. Relation of military to civil authority.

#### Cross-References.

Conclusiveness in civil courts of decisions of court-martial, see post, § 49.  
Effect of military order directing dismissal of suit, see "War," § 31.  
Provisional courts under military authority, see "Courts," § 442.

### § 4. Establishment and organization.

### § 5. Persons in military or naval service in general.

### § 5½. Militia called into service of United States.

### §§ 6-15. Officers.

#### Cross-References.

Cadets as officers, see post, § 16.  
Holding other office, see "Officers," § 30.  
Mandamus to prevent reduction, see "Mandamus," § 77.  
Bounty or prize money for capture or destruction of enemy's vessel, see "War," § 28.  
Jurisdiction of court of claims of claim for services referred to court by Congress, see "Courts," § 451.  
Privilege from arrest, see post, §§ 31, 36.

### § 16. Military and naval academies and cadets.

### § 17. Enlistment.

#### Cross-References.

Bounties for enlistment, see "Bounties," § 1.  
Habeas corpus to obtain discharge from enlistment, see "Habeas Corpus," §§ 13, 16, 42, 54.

### § 18.— In general.

### § 19.— Minors.

#### Cross-References.

As subject to court-martial, see post, § 44.  
Habeas corpus to determine validity of enlistment, see "Habeas Corpus," §§ 16, 42, 54.

#### Annotation.

Enlistment of minor without parent's consent in army, navy, or militia.—39 L. R. A. (N. S.) 455, note.  
Right of minor unlawfully enlisted in army or navy to discharge on habeas corpus from custody of court-martial on charge of desertion or fraudulent enlistment.—18 L. R. A. (N. S.) 956, note.

### § 20. Compulsory service and drafts.

#### Cross-Reference.

Power of city to refund money expended by men drafted to furnish substitutes, see "Municipal Corporations," § 871.

### § 21. Enlisted men.

### § 22.— Discharge.

#### Cross-Reference.

Certificate of discharge as evidence of character in criminal prosecution, see "Criminal Law," § 377.

### § 23.— Pay and allowances.

#### Cross-References.

Receipt of pay by minor as defeating right of parent to avoid enlistment, see ante, § 19.  
Bounty or prize money for capture or destruction of enemy's vessel, see "War," § 28.

### § 24.— Rights and privileges.

#### Cross-References.

Right to vote, see "Elections," § 74.  
Service as affecting domicile, see "Domicile," § 5.  
Services as mode of acquiring legal settlement, see "Paupers," § 19.

**§ 25.— Duties.****§ 26. Paymasters, pursers, disbursing officers, and agents.***Cross-References.*

Embezzlement, see post, § 36.

Forgery of certificates of deposit issued by paymaster, see "Forgery," §§ 7, 29.

**§ 27. Civilian employees and contractors.****§ 28. Forts and military posts.***Cross-References.*

Judicial notice as to location of military reservation, see "Criminal Law," § 304.

Judicial notice in criminal prosecution as to holding of land as military post, see "Criminal Law," § 304.

Judicial notice of orders creating military reservation, see "Criminal Law," § 304.

Military reservations, see "Public Lands," § 50.

**§ 29. Vessels and navy yards.****§ 30. Medals of honor.****§ 31. Civil status of persons in military or naval service.***Cross-Reference.*

Effect of military orders directing dismissal of suits, see "War," § 31.

**§ 32. Civil liabilities of persons in military or naval service.***Cross-Reference.*

Effect of military orders directing dismissal of suits, see "War," § 31.

**§ 33.— To one another.****§ 34.— To civilians.**

(a) As authorized by the federal statutes, the Secretary of the Navy promulgated a regulation of the navy directing officers through whom a communication is to be forwarded to a higher authority to indorse their opinion in regard to it. *Held*, in an action for libel, that an opinion of the superintendent of the Naval Academy, indorsed on a resignation of a professor therein, was not absolutely privileged.—*Maurice v. Worden*, 54 Md. 233, 39 Am. Rep. 384.

**§ 35. Offenses by persons in military or naval service.***Cross-Reference.*

Habeas corpus to procure release of officer confined without charges preferred, see "Habeas Corpus," § 25.

**§ 36.— In general.****§ 37.— Mutiny.****§ 38.— Desertion.***Cross-Reference.*

As affecting eligibility as juror, see "Jury," § 45.

**§ 39.— Minor violations of articles of war, or of army or navy regulations.***Cross-Reference.*

Offenses in general, see ante, § 36.

**§ 40. Offenses by persons not in military or naval service.****§ 41. Courts of inquiry.****§ 42. Courts-martial.***Cross-References.*

Rules and orders, see ante, § 2.

Acquittal by court-martial as bar to proceedings by civil authorities, see "Criminal Law," § 186.

Mandamus to court-martial, see "Mandamus," § 3.

**§ 43.— Creation, constitution, and organization.****§ 44.— Jurisdiction.****§ 45.— Effect of acquittal in state court.****§ 46.— Former punishment for same offense.****§ 47.— Proceedings and review.***Cross-References.*

Conclusiveness and collateral attack, see post, § 49.

Review by habeas corpus, see "Habeas Corpus," §§ 19, 30, 92, 95.

Review of proceedings of military tribunal by United States Supreme Court, see "Courts," § 380.

Right of members of national guard to jury trial, see "Jury," § 11.

**§ 48.— Sentence, approval, and execution.***Cross-Reference.*

Rules and regulations, see ante, § 2.

**§ 49.— Conclusiveness of sentence.***Cross-Reference.*

Proceedings and review, see ante, § 47.

**§ 50. Aid or relief to families of persons in military or naval service.****§ 51. Aid or relief to discharged soldiers, sailors, or marines.***Cross-References.*

Acquisition of legal settlement by persons receiving aid, see "Paupers," § 19.

Grant of state land to soldiers, see "Public Lands," § 153.

**§ 52. Soldiers' homes.***Cross-References.*

Acquisition of legal settlement by inmates, see "Paupers," § 19.  
 Including in election district, see "Elections," § 48.  
 Polling place at soldiers' home, see "Elections," § 203.  
 Right of inmates to vote, see "Elections," § 77.  
 Right of inmates to vote at town meeting, see "Towns," § 23.

**§ 53. Burial of indigents.****§ 54. Battlefields and monuments.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**ARRAIGNMENT.***Cross-References.*

See "Criminal Law," §§ 261-303.  
 In contempt proceedings, see "Contempt," § 57.  
 In proceedings for removal of officers, see "Officers," § 74.

*Annotation.*

1 Words and Phrases, 498, 499.

**ARRAY.***Cross-References.*

Challenge to panel or array, see "Grand Jury," § 17; "Jury," §§ 114-121.

*Annotation.*

1 Words and Phrases, 500.

**ARREARS.***Cross-References.*

Of alimony, see "Divorce," § 277.  
 Nonpayment of premiums, assessment or dues as ground of forfeiture, see "Insurance," §§ 349-370.  
 Of installment or interest ground of foreclosure of mortgage, see "Mortgages," §§ 397-401.  
 Of rent in general, see "Landlord and Tenant," §§ 181-234.  
 Of rent, nonpayment ground of forfeiture of lease, see "Landlord and Tenant," § 108.  
 Of taxes, collection and enforcement, see "Taxation," §§ 412-694.

*Annotation.*

1 Words and Phrases, 500, 501.

**A R R E S T .***Scope-Note.*

[INCLUDES taking and keeping persons in legal custody to answer demands in civil actions or charges of crime, or to prevent commission of crime; nature and scope of the remedy in both civil and criminal cases in general; in what cases and to and against whom it is allowed, and privilege from arrest; grounds of arrest and jurisdiction over and proceedings to obtain arrest; issuance, requisites, and validity of writs, warrants, orders of arrest, etc., in civil actions, and amendment thereof; authority to arrest, making arrests, and service of writs, warrants, etc.; quashing, vacating, or setting aside process or orders for arrest, discharge from custody of poor debtors, etc., and other relief against arrest; return of process for arrest; liabilities on and enforcement of securities given to obtain arrests; and liabilities of persons other than officers for wrongfully procuring or making arrests.

[EXCLUDES construction of constitutional provisions prohibiting imprisonment for debt (see "Constitutional Law"); arrest as a means of commencing civil actions (see "Process"); liability to arrest of particular classes of persons (see "Infants," and other specific heads); writs of ne exeat (see "Ne Exeat"); warrants for arrest in criminal prosecutions (see "Criminal Law"); admitting to bail, and rights and liabilities of bail (see "Bail"); review of decisions in civil actions granting, vacating, etc., writs or orders, etc., for arrest, or discharging from arrest (see "Appeal and Error"); writs of habeas corpus (see "Habeas Corpus"); liabilities for illegal arrests (see "False Imprisonment"); duties and liabilities of officers in respect of arrests, care and custody of prisoners, escapes, etc. (see "Clerks of Courts"; "Sheriffs and Constables"; "Prisoners"; and other specific heads); offenses committed in making or resisting arrest or delivering prisoner from custody (see "Assault"; "Homicide"; "Obstructing Justice"; "Escape"; "Rescue"); arrest of vessels (see "Admiralty"); and motions in arrest of judgment (see "Judgment"; "Criminal Law"). For complete list of matters excluded, see cross-references, post.]



*Analysis.***I. In Civil Actions.**

- § 1. Nature and purpose of remedy.
- § 2. Constitutional provisions as to imprisonment for debt.
- § 3. Statutory provisions.
- § 4. Actions in which arrest is authorized.
- § 5. Existence of, or resort to, other remedy.
- § 6. Persons entitled.
- § 7. Persons liable.
- § 8. — In general.
- § 9. — Privileges and exemptions.
- § 10. Grounds.
- § 11. — Nonresidence.
- § 12. — Absconding, absence, or concealment.
- § 13. — Nature of cause of action.
- § 14. — Acts in official or fiduciary capacity.
- § 15. — Fraud in contracting or incurring liability.
- § 16. — Fraudulent removal or disposition of property.
- § 17. — Acts preventing replevin of chattel.
- § 18. Waiver or loss of right.
- § 19. Jurisdiction and authority to grant.
- § 20. Proceedings to procure in general.
- § 21. Affidavits for arrest.
- § 22. — In general.
- § 23. — Persons who may make.
- § 24. — Formal requisites.
- § 25. — Averments in general.
- § 26. — Averments as to parties.
- § 27. — Knowledge or information.
- § 28. — Averments as to cause of action and indebtedness.
- § 29. — Averments as to grounds for arrest.
- § 30. — Filing and service.
- § 31. — Amendment and supplemental affidavits.
- § 32. — Defects, objections, and waiver.
- § 33. Writ, warrant, or order.
- § 34. Bond, undertaking, or other security to procure arrest.
- § 35. Complaint or other pleading.
- § 36. Service of process or order.
- § 37. Making arrest.
- § 38. Return of process or order.
- § 39. Custody and disposition of prisoner.
- § 40. Proceedings to support or enforce arrest.
- § 41. Quashing or vacating.
- § 42. — In general.
- § 43. — Grounds.
- § 44. — Motions and proceedings thereon.
- § 45. — Operation and effect.
- § 46. Discharge on motion.

**I. In Civil Actions—Continued.**

- § 47. — In general.
- § 48. — Grounds.
- § 49. — Motions and proceedings thereon.
- § 50. — Operation and effect.
- § 51. Discharge on prison limits bond.
- § 52. Discharge on surrender of or disclosure as to property.
- § 53. Discharge of poor debtors.
- § 54. Rearrest.
- § 55. Second arrest.
- § 56. Liabilities on bonds or undertakings.
- § 57. Wrongful arrest.

**II. On Criminal Charges.**

- § 58. Grounds and purpose in general.
- § 59. Persons liable.
- § 60. — Privileges and exemptions.
- § 60(a) — Persons illegally brought within jurisdiction.
- § 61. Authority to arrest without warrant.
- § 62. — In general.
- § 63. — Officers and persons assisting them.
- § 64. — Private persons.
- § 65. Authority under warrant.
- § 66. Place of arrest.
- § 67. Time for arrest.
- § 68. Mode of making arrest.
- § 69. Summoning bystanders.
- § 70. Custody and disposition of prisoner.
- § 71. Property in possession of prisoner.
- § 72. Rearrest.
- § 73. Second arrest.

*Cross-References.*

See "Bail"; "Escape"; "Ne Exeat"; "Prisons"; "Rescue."  
 Act authorizing clerk of court to issue warrants of arrest and admit to bail as conferring judicial power, see "Constitutional Law," § 80.  
 Admissions made while under arrest, see "Evidence," § 203.  
 As ground for recovery of payment, see "Payment," § 87.  
 Assault in making arrest, see "Assault and Battery," § 10.  
 Attachment of the person to compel payment of costs, see "Costs," § 281.  
 Attachment of witness to compel attendance, see "Witnesses," §§ 17, 20.  
 Best and secondary evidence as to issuance of warrant for arrest, see "Criminal Law," §§ 398-404.  
 Bribery of officer making illegal arrest, see "Bribery."  
 Charge that one has been arrested as constituting libel or slander, see "Libel and Slander," § 7.  
 Civil liability for wrongful killing of person resisting arrest, see "Death," § 21.

Concurrent and conflicting jurisdiction of courts as to prisoners under arrest, see "Courts," §§ 477, 495.  
 Conflicting regulations by state and city, see "Municipal Corporations," § 592.  
 Constitutional guaranty of personal liberty, see "Constitutional Law," § 83.  
 Criminal responsibility of officer for assault in making arrest, see "Assault and Battery," § 64.  
 Deprivation of life or liberty without due process of law, see "Constitutional Law," § 262.  
 Execution against the person in justice's court, see "Justices of the Peace," § 135.  
 False affidavit to procure warrant, see "Perjury," § 6.  
 Fees of officers, see "Sheriffs and Constables," §§ 35-40; "United States Marshals," § 8.  
 For breach of condition of pardon or parole, see "Pardon," § 14.  
 For contempt of court, see "Contempt," § 56.  
 For nonpayment of taxes, see "Taxation," § 602.

For violation of mandamus, see "Mandamus," § 186.  
 Homicide in making arrest, see "Homicide," §§ 72, 105, 166.  
 Homicide in resisting arrest, see "Homicide," §§ 20, 55, 67, 111.  
 Illegal arrest, see "False Imprisonment."  
 Illegality of arrest as affecting jurisdiction, see "Criminal Law," § 98.  
 In civil actions before justices of the peace, see "Justices of the Peace," § 85.  
 In equity, see "Equity," § 439.  
 In extradition proceedings, see "Extradition," §§ 13, 37.  
 In prosecutions for abandonment of wife, see "Husband and Wife," § 307.  
 In suits for separate maintenance of wife, see "Husband and Wife," § 291.  
 Issuance or service of order or warrant on Sunday, see "Sunday," § 30.  
 Judicial notice of privilege of officers from arrest, see "Criminal Law," § 304.  
 Liability of county for expenses of making arrests, see "Counties," § 137.  
 Liability of sheriff for arrest of privileged person, see "False Imprisonment," § 7.  
 Liability of sheriff or constable for failure to arrest, see "Sheriffs and Constables," § 102.  
 Malicious arrest, see "Malicious Prosecution," §§ 11, 38.  
 Mandamus to compel arrest, see "Mandamus," § 99.  
 Mandamus to review order quashing writ, see "Mandamus," § 4.  
 Of bankrupt to compel attendance as witness before bankruptcy court, see "Bankruptcy," § 237.  
 Of children found in places where intoxicating liquors are sold, see "Infants," § 19.  
 Of convict labor, see "Convicts," §§ 9, 11.  
 Of counsel, ground for continuance, see "Criminal Law," § 593.  
 Of debtor in supplementary proceedings, see "Execution," §§ 382-384.  
 Of defendant in bastardy proceedings, see "Bastards," § 43.  
 Officers as privileged from arrest, see "Army and Navy," §§ 34, 36.  
 Of judgment debtor on affidavit that the debt was contracted through fraud as deprivation of liberty or property without due process of law, see "Constitutional Law," § 306.  
 On *capias pro fine*, see "Fines," § 9.  
 On criminal charge as evidence of negligence, see "Negligence," § 130.  
 On execution, see "Execution," §§ 421-453.  
 On warrant issued by *de facto* judge, see "Judges," § 6.  
 Power of city to regulate mode of arrest, see "Municipal Corporations," § 594.  
 Powers of policemen in general, see "Municipal Corporations," § 188.  
 Preliminary warrant or other process, see "Criminal Law," §§ 216-220½.  
 Privilege from arrest while voting, see "Elections," § 233.  
 Property taken from prisoner as subject to garnishment, see "Garnishment," § 58.

Release of person arrested, see "Habeas Corpus."  
 Resisting or avoiding arrest as evidence of guilt, see "Criminal Law," § 353.  
 Resisting or obstructing officers, see "Obstructing Justice," § 3.  
 Return of warrant, see "Criminal Law," § 220½.  
 Review of questions of fact, see "Appeal and Error," § 1024.  
 Review on habeas corpus, see "Habeas Corpus," §§ 21, 102.  
 Right of officer to carry weapons, see "Weapons," § 11.  
 Stipulations affecting right to arrest, see "Stipulations," § 14.  
 Under writ of *ne exeat*, see "Ne Exeat."  
 Validity of law authorizing issuance of *ne exeat* to insolvent, see "Ne Exeat," § 2.  
 Waiver of objection to warrant or arrest by giving recognizance, see "Criminal Law," § 219.  
 Without warrant as violation of constitutional inhibition against unreasonable searches and seizures, see "Searches and Seizures."

## I. IN CIVIL ACTIONS.

### Cross-References.

Constitutional prohibition of imprisonment for debt, see "Constitutional Law," § 83.  
 Courts invested with appellate jurisdiction of orders relating to discharge of insolvent debtors, see "Courts," § 219.  
 Discharge of bankrupt from arrest, see "Bankruptcy," § 393.  
 In summary proceedings on tax collector's bond, see "Taxation," § 569.  
 Practice in federal courts, see "Courts," § 355.  
 Service of writ of entry by arrest, see "Entry, Writ of," § 13.  
 To enforce payment of alimony or other allowances, see "Divorce," § 268.

### § 1. Nature and purpose of remedy.

#### Cross-References.

Statutory provisions, see post, § 3.  
 Existence of or resort to other remedy, see post, § 5.

### § 2. Constitutional provisions as to imprisonment for debt.

#### Cross-Reference.

See "Constitutional Law," § 83.

### § 3. Statutory provisions.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 4. Actions in which arrest is authorized.

#### Cross-References.

Averments as to cause of action, see post, § 28.  
 Actions in justice's court, see "Justices of the Peace," § 85.

For separate maintenance of wife, see "Husband and Wife," § 291.  
Summary proceedings on tax collectors' bonds, see "Taxation," § 569.

(a) The practice of the court is not to require bail in a suit on an appeal bond with a collateral condition; yet the defendant may be held to bail on the plaintiff's making affidavit.—*Coward v. Bohun*, 1 H. & J. 538.

**§ 5. Existence of, or resort to, other remedy.**

**§ 6. Persons entitled.**

*Annotation.*

Distinction between private person and peace officer with respect to arrest.—8 L. R. A. 532, note.

**§ 7. Persons liable.**

*Cross-Reference.*

Partners, see "Partnership," § 207.

**§ 8.— In general.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 9.— Privileges and exemptions.**

*Cross-References.*

Attorneys, see "Attorney and Client," § 16.

Bankrupts, see "Bankruptcy," § 392.

Effect of discharge in insolvency, see "Insolvency," § 146.

Elector while voting, see "Elections," § 233.

Habeas corpus to release person arrested in violation of privilege, see "Habeas Corpus," §§ 20, 29.

Liability of sheriff for arrest of privileged person attending court, see "False Imprisonment," § 7.

Officers, see "Army and Navy," §§ 34, 36.

(a) Jurors are protected from arrest during their attendance on the court, like suitors and witnesses.—*Brookes v. Chesley*, 4 H. & McH. 295.

(b) The exemption of a juror continues only until his discharge, at which time he is subject to arrest upon process issued while his service as juror continued.—*Brookes v. Chesley*, 4 H. & McH. 295.

**§ 10. Grounds.**

*Cross-Reference.*

Averments as to grounds, see post, § 29.

**§ 11.— Nonresidence.**

**§ 12.— Absconding, absence, or concealment.**

**§ 13.— Nature of cause of action.**

**§ 14.— Acts in official or fiduciary capacity.**

**§ 15.— Fraud in contracting or incurring liability.**

**§ 16.— Fraudulent removal or disposition of property.**

**§ 17.— Acts preventing replevin of chattel.**

**§ 18. Waiver or loss of right.**

*Cross-Reference.*

Effect of stipulation, see "Stipulations," § 14.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 19. Jurisdiction and authority to grant.**

(a) A citizen can be sued or arrested by civil process only in the county in which he resides, but may be taken by an attachment from a high court of chancery anywhere within the state.—*In re Cape Sable Co.*, 3 Bland Ch. 606.

(b) A party to a civil case may not be arrested by the sheriff of a county of which he is not a resident.—*Hoffman v. Prout*, 4 H. & McH. 165.

**§ 20. Proceedings to procure in general.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§§ 21-32. Affidavits for arrest.**

*Cross-Reference.*

In supplementary proceedings, see "Execution," § 383.

(a) A defendant may be held to special bail, in an action on a bond, bill of exchange, or note, without an affidavit of debt.—Anonymous, 4 H. & McH. 159.

**§ 33. Writ, warrant, or order.**

*Cross-References.*

In extradition proceedings, see "Extradition," §§ 12, 36.

Issuance or service on Sunday, see "Sunday," § 30.

**§ 34. Bond, undertaking, or other security to procure arrest.**

*Cross-Reference.*

Liabilities on bonds and undertakings, see post, § 56.

**§ 35. Complaint or other pleading.***Cross-References.*

See ante, § 29.

Complaint regarded as affidavit, see ante, § 22.

Conformity of order for arrest to complaint, see ante, § 33.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 36. Service of process or order.**

(a) A party to a civil case may not be arrested by the sheriff of a county of which he is not a resident.—*Hoffman v. Prout*, 4 H. & McH. 165.

**§ 37. Making arrest.****§ 38. Return of process or order.****§ 39. Custody and disposition of prisoner.****§ 40. Proceedings to support or enforce arrest.****§ 41. Quashing or vacating.****§ 42.— In general.****§ 43.— Grounds.****§ 44.— Motions and proceedings thereon.***Cross-References.*

Right to attack affidavit on motion to vacate order, see ante, § 32.

Cure by appearance of defect in notice of motion, see "Appearance," § 24.

**§ 45.— Operation and effect.***Cross-Reference.*

Mandamus to review order quashing writ, see "Mandamus," § 4.

**§ 46. Discharge on motion.***Cross-Reference.*

Of bankrupt from arrest, see "Bankruptcy," § 393.

**§ 47.— In general.****§ 48.— Grounds.****§ 49.— Motions and proceedings thereon.***Cross-References.*

Courts invested with appellate jurisdiction of orders relating to discharge, see "Courts," § 219.

Necessity for separate statement of conclusions of law and fact, see "Trial," § 394.

Right to jury trial, see "Jury," § 16.

**§ 50.— Operation and effect.****§ 51. Discharge on prison limits bond.****§ 52. Discharge on surrender of or disclosure as to property.****§ 53. Discharge of poor debtors.****§ 54. Re-arrest.****§ 55. Second arrest.****§ 56. Liabilities on bonds or undertakings.***Cross-Reference.*

Judgment on recognizance as debt discharged in bankruptcy, see "Bankruptcy," § 424.

**§ 57. Wrongful arrest.***Cross-References.*

See "Ne Exeat."

Malicious arrest, see "Malicious Prosecution."

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**II. ON CRIMINAL CHARGES.***Cross-References.*

Whether proceeding is civil or criminal, see ante, § 9.

Effect as evidence of negligence, see "Negligence," § 130.

False affidavit to procure warrant, see "Perjury," § 6.

Fees of sheriff or constable, see "Sheriffs and Constables," §§ 35-40.

Fees of United States marshal, see "United States Marshals," § 8.

For breach of condition of pardon or parole, see "Pardon," § 14.

Illegality of arrest as affecting jurisdiction, see "Criminal Law," § 98.

In prosecutions for abandonment of wife, see "Husband and Wife," § 307.

Liability of county for expenses of making arrests, see "Counties," § 137.

Mandamus to compel arrest, see "Mandamus," § 99.

Powers of policemen in general, see "Municipal Corporations," § 188.

Preliminary warrant or other process, see "Criminal Law," §§ 216-220½.

Resisting or obstructing officers, see "Obstructing Justice," § 3.

Return of warrant, see "Criminal Law," § 220½.

Review on habeas corpus, see "Habeas Corpus," §§ 21, 102.

Right of officer to carry weapons, see "Weapons," § 11.

Waiver of objection to warrant or arrest by giving recognizance, see "Criminal Law," § 219.

**§ 58. Grounds and purpose in general.****§ 59. Persons liable.****§ 60.— Privileges and exemptions.***Cross-References.*

See "Extradition," §§ 19, 41.

Arrest of privileged person as ground for habeas corpus, see "Habeas Corpus," § 29.

Members of legislature, see "States," § 28.

**§ 60 (a).—Persons illegally brought within jurisdiction.**

No paragraphs in this digest. For cases in other states see 4 Cent. Dig. Arrest, §148.

**§ 61. Authority to arrest without warrant.**

*Cross-References.*

See "False Imprisonment," § 7.

Arrest without warrant as violation of constitutional provision prohibiting unreasonable searches and seizures, see "Searches and Seizures," § 7.

*Annotation.*

Right to make arrest without a warrant generally.—8 L. R. A. 529, note.

**§ 62.—In general.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 63.—Officers and persons assisting them.**

*Cross-References.*

Indian policemen, see "Indians," § 32.

United States marshal, see "United States Marshals," § 28.

(a) A police officer found plaintiff in possession of a horse substantially answering the description of a stolen horse, and, on being questioned, plaintiff first said that it belonged to him, and that he had brought it from Virginia, then said that it belonged to a person in his company, and finally that it belonged to his uncle, who resided in a neighboring town. He afterwards offered to take the officers to the boarding house of the person traveling with him, but, after going a short distance, said he did not know where it was, and that the person was probably not there. *Held*, that there was reasonable ground to suspect that plaintiff had stolen the horse, and his arrest without a warrant was not illegal.—*Brish v. Carter*, 98 Md. 445, 57 Atl. 210.

(b) A peace officer may arrest without a warrant whenever he has reasonable grounds to suspect that the person arrested has committed a felony, and it is immaterial whether the suspicion is founded on his own knowledge, or on information imparted to him by others.—*Brish v. Carter*, 98 Md. 445, 57 Atl. 210.

(c) A constable may arrest without a warrant a person whom he has reasonable grounds to suspect has been guilty of a fel-

ony, though the suspicion arises out of information imparted to him.—*Kirk v. Garrett*, 84 Md. 383, 35 Atl. 1089.

(d) Where a railway conductor, being unable to eject several passengers guilty of disorderly conduct on his train, telegraphs to a station ahead for an officer, who immediately on the arrival of the train arrests one of such passengers on the conductor's complaint, the arrest is lawful, though without a warrant.—*Baltimore & O. R. Co. v. Cain*, 81 Md. 87, 31 Atl. 801, 28 L. R. A. 688.

(e) A policeman may arrest, without a warrant, a scavenger in the act of violating a regulation of the board of health of the city by depositing night soil at places other than those designated for that purpose.—*Mitchell v. Lemon*, 34 Md. 176.

**§ 64.—Private persons.**

**§ 65. Authority under warrant.**

*Cross-Reference.*

Detectives, see "Detectives," § 4.

**§ 66. Place of arrest.**

**§ 67. Time for arrest.**

*Cross-Reference.*

Arrest on Sunday, see "Sunday," § 30.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 68. Mode of making arrest.**

*Annotation.*

Right of peace officer to enter dwelling to make arrest without warrant.—16 L. R. A. 500, note.

(a) An arrest is the seizing of a person and detaining him in the custody of the law, the officer being authorized to use such force as is necessary to accomplish the purpose.—*Baltimore & O. R. Co. v. Strube*, 111 Md. 119, 73 Atl. 697.

(b) A justice of the peace, in making an arrest for a misdemeanor committed in his presence, should make known that he is acting in his official capacity.—*Day v. Day*, 4 Md. 262.

**§ 69. Summoning bystanders.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 70. Custody and disposition of prisoner.

(a) An officer arresting one for violating an ordinance regulating the use of a bridge should take the offender before a justice of the peace, to be dealt with according to law, and should not put him to the alternative of paying a certain sum or going to jail.—*Twilley v. Perkins*, 77 Md. 252, 26 Atl. 286, 39 Am. St. Rep. 408, 19 L. R. A. 632.

### § 71. Property in possession of prisoner.

#### *Cross-References.*

Property taken from prisoner as subject to garnishment, see "Garnishment," § 58.

Robbery by officers, see "Robbery," §§ 3, 6, 14.

#### *Annotation.*

Searching prisoner for evidence of guilt.—9 L. R. A. 323, note.

### § 72. Re-arrest.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 73. Second arrest.

(a) A prisoner, discharged on reversal of a judgment because he was not allowed to withdraw his plea and demur, may immediately be re-arrested, to be held to answer the indictment.—*Cochrane v. State*, 6 Md. 400.

## ARREST OF JUDGMENT.

#### *Cross-References.*

In civil actions, see "Judgment," §§ 259-269.

In criminal prosecutions, see "Criminal Law," §§ 968-976.

#### *Annotation.*

1 Words and Phrases, 503, 504.

## ARSON.

### *Scope-Note.*

[INCLUDES malicious burning of, or setting fire to or attempting to burn, buildings or other structures and property therein; nature and elements of the crimes of arson, house-burning, etc., and of degrees thereof; nature and extent of criminal responsibility therefor, and grounds of defense; and prosecution and punishment of such acts as public offenses.

[EXCLUDES liabilities for injuries from fire caused by negligence (see "Negligence"), and offenses of burning or setting fire to woods, prairies, fields, crops, etc., and of refusing to aid in, or obstructing, extinguishment of fires (see "Fires"). For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

- § 1. Nature and elements of offenses.
- § 2. — In general.
- § 3. — Intent.
- § 4. — Malice.
- § 5. — Character of property.
- § 6. — Value of property.
- § 7. — Situation of property.
- § 8. — Occupancy of building.
- § 9. — Ownership or possession of property.
- § 10. — Time.
- § 11. — Burning or setting fire.
- § 12. Degrees.
- § 13. Attempts.
- § 14. Defenses.
- § 15. Persons liable.
- § 17. Indictment or information.
- § 18. — Requisites and sufficiency in general.

- § 19. — Intent and malice.
- § 20. — Description of property.
- § 21. — Occupancy of building.
- § 22. — Ownership or possession of property.
- § 23. — Burning or setting fire.
- § 24. — Attempt.
- § 25. — Issues, proof, and variance.
- § 26. Evidence.
- § 27. — Presumptions and burden of proof.
- § 28. — Admissibility in general.
- § 29. — Intent and malice.
- § 30. — Description and ownership or possession of property.
- § 31. — Motive.
- § 32. — Threats, preparations, and previous attempts.
- § 33. — Identity, presence, and acts of accused.
- § 34. — Incriminating circumstances.
- § 35. — Matters of defense.
- § 36. — Rebuttal.
- § 37. — Weight and sufficiency.
- § 38. Trial.
- § 39. — Conduct in general.
- § 40. — Questions for jury.
- § 41. — Instructions.
- § 42. — Verdict.
- § 43. New trial.
- § 44. Appeal and error.
- § 45. Sentence and punishment.

#### *Cross-References.*

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| <p>Breaking and entering building with intent to commit arson, see "Burglary," § 19.</p> <p>Burning or setting fire to property other than buildings and their contents, see "Fires."</p> <p>Concealment of offense of, as motive for crime, see "Homicide," § 166.</p> <p>Continuance of prosecutions therefor, see "Criminal Law," §§ 589, 595, 598.</p> <p>Former jeopardy, see "Criminal Law," §§ 192, 196.</p> <p>Jurisdiction, see "Criminal Law," § 93.</p> <p>Liabilities for injuries from fires caused by negligence, see "Negligence," § 21.</p> <p>Libel or slander in charging with commis-</p> | <p>sion of offense, see "Libel and Slander," § 7.</p> <p>Malicious prosecution, see "Malicious Prosecution," § 22.</p> <p>Merger of offenses, see "Criminal Law," § 30.</p> <p>Nolle prosequi, see "Criminal Law," § 302.</p> <p>Preliminary complaint, see "Criminal Law," § 211.</p> <p>Separate trial of co-defendants, see "Criminal Law," § 620.</p> <p>Subject and title of act relating to arson, see "Statutes," § 118.</p> <p>Threats to accuse of burning with intent to defraud, see "Threats," § 5.</p> |
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#### § 1. Nature and elements of offenses.

##### *Cross-Reference.*

Creation of offense, see "Criminal Law," § 13.

#### § 2.— In general.

#### § 3.— Intent.

##### *Cross-References.*

Allegations in indictment or information, see post, § 19.

Evidence, see post, §§ 29, 37.

#### § 4.— Malice.

##### *Cross-References.*

See ante, § 3.

Allegations in indictment or information, see post, § 19.

Evidence, see post, § 29.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.



**§ 5.— Character of property.***Cross-Reference.*

Determining degree of offense, see post, § 12.

(a) Acts 1809, c. 138, § 5 (Code, art. 27, § 12), provides that every person, his or her aiders, abettors, or counselors, who shall be duly convicted of the crime of willfully burning any mill, etc., or other outhouse, not parcel of any dwelling house, being empty, etc., shall, at the discretion of the court, suffer death, or be sentenced to confinement in the penitentiary. *Held*, that a schoolhouse is embraced within the clause "any other outhouse not parcel of any dwelling house."—*Jones v. Hungerford*, 4 G. & J. 402.

(b) Under act 1809, c. 138, § 5 (Code, art. 27, § 12), declaring it to be a felony to burn a barn that is empty, or having in it personal property, a conviction may be had although the barn contained property other than personal.—*House v. House*, 5 H. & J. 125.

**§ 6.— Value of property.***Cross-References.*

See post, § 9.

Determining degree of offense, see post, § 12.

**§ 7.— Situation of property.****§ 8.— Occupancy of building.***Cross-References.*

Allegations in indictment or information, see post, § 21.

Determining degree of offense, see post, § 12.

**§ 9.— Ownership or possession of property.***Cross-References.*

Allegations in indictment or information, see post, § 22.

Evidence, see post, §§ 30, 37.

Persons liable, see post, § 15.

*Annotation.*

Building owned by defendant.—32 L. R. A. 647, note.

Building owned by defendant's spouse.—21 L. R. A. 27, note.

**§ 10.— Time.****§ 11.— Burning or setting fire.****§ 12. Degrees.****§ 13. Attempts.****§ 14. Defenses.****§ 15. Persons liable.***Annotation.*

Liability of children.—36 L. R. A. 201.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 16. (Omitted from the classification used herein.)****§ 17. Indictment or information.***Cross-References.*

Conspiracy to commit arson, see "Conspiracy," § 43.

Conviction of offense included in charge, see "Indictment and Information," § 190.

Election between counts, see "Indictment and Information," § 132.

Election between offenses, see "Indictment and Information," § 132.

Mode of making objection, see "Indictment and Information," § 133.

Preliminary complaint, see "Criminal Law," § 211.

**§ 18.— Requisites and sufficiency in general.***Cross-References.*

Averments as to felonious character of act, see "Indictment and Information," § 91.

Averments as to time of offense, see "Indictment and Information," § 87.

Duplicity, see "Indictment and Information," § 125.

Joinder of counts, see "Indictment and Information," § 130.

Language of statute, see "Indictment and Information," § 110.

Sufficiency of averment as to venue, see "Indictment and Information," § 86.

Variance from preliminary proceedings, see "Indictment and Information," § 122.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 19.— Intent and malice.**

(a) An indictment for arson charged that the defendants "feloniously, willfully, and unlawfully" set fire to, burned, and consumed a certain building used as a brewery for the manufacture of beer. *Held*, that the indictment was defective in not alleging that the burning was malicious.—*Kellenbeck v. State*, 10 Md. 431, 69 Am. Dec. 166.

**§ 20.— Description of property.***Cross-Reference.*

Indictment for crime in Indian reservation, see "Indians," § 38.

(a) An indictment under Code, art. 27,

§ 12, providing against the burning of barns and other outhouses not parcel of any dwellinghouse, is bad unless it allege that the building burned was not parcel of any dwellinghouse.—*Gibson v. State*, 54 Md. 447.

(b) A description in an indictment for arson that the building burned was "a certain barn of one J., there situate," is bad, as indefinite.—*Gibson v. State*, 54 Md. 447.

§ 21.— **Occupancy of building.**

§ 22.— **Ownership or possession of property.**

§ 23.— **Burning or setting fire.**

(a) An indictment under act 1809, c. 138 (Code, art. 27, § 12), for the crime of arson by "feloniously, unlawfully, and maliciously setting fire to a certain dwellinghouse," is defective in not averring that the house was burned.—*Cochrane v. State*, 6 Md. 400.

§ 24.— **Attempt.**

*Cross-Reference.*

Conviction of attempt under indictment for arson, see "Indictment and Information," § 190.

§ 25.— **Issues, proof, and variance.**

§ 26.— **Evidence.**

§ 27.— **Presumptions and burden of proof.**

§ 28.— **Admissibility in general.**

*Cross-References.*

Description and ownership of property, see post, § 30.

Incriminating circumstances, see post, § 34.

Matters of defense, see post, § 35.

Acts and declarations of conspirators and co-defendants, see "Criminal Law," §§ 422, 424, 427.

Admissions, see "Criminal Law," §§ 406, 407, 409.

Best and secondary evidence, see "Criminal Law," § 400.

Confessions, see "Criminal Law," §§ 520, 523, 531, 535, 736.

Declarations, see "Criminal Law," §§ 415, 417.

Documentary evidence in general, see "Criminal Law," §§ 433, 438, 442.

Hearsay, see "Criminal Law," § 420.

Opinion evidence, see "Criminal Law," §§ 459, 472.

Other offenses, see "Criminal Law," §§ 369, 371, 372, 373, 374.

Res gestæ, see "Criminal Law," § 368.

*Annotation.*

Admissibility of evidence of other offenses.—62 L. R. A. 208, 238, 289, 319, 325, notes.

§ 29.— **Intent and malice.**

§ 30.— **Description and ownership or possession of property.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 31.— **Motive.**

(a) In a prosecution for arson, in which it was claimed that defendant had attempted to destroy his storeroom, filled with goods, which were insured for \$14,000, evidence that defendant, in applying for a trader's license, had stated under oath that he intended to carry in trade a stock not exceeding \$4,000 in busy seasons, was admissible.—*Hooker v. State*, 98 Md. 145, 56 Atl. 390.

§ 32.— **Threats, preparations, and previous attempts.**

§ 33.— **Identity, presence, and acts of accused.**

*Cross-Reference.*

Opinion evidence, see "Criminal Law," § 453.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 34.— **Incriminating circumstances.**

(a) In a prosecution for arson, in which it was the theory of the state that defendant had left a candle burning under the counter of his storeroom in such a manner as to cause the fire, and a policeman had testified to seeing a dim light in the room a short time before the fire occurred, but where there was no evidence that any candle had in fact been placed as claimed, and no remnants of one were found in the store, it was error to allow the policeman to testify that, after having placed a candle in the position in which it was supposed the candle which caused the fire had been, the light produced looked from the outside exactly like the light which he saw on the night of the fire.—*Hooker v. State*, 98 Md. 145, 56 Atl. 390.

§ 35.— **Matters of defense.**

§ 36.— **Rebuttal.**

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

**§ 37.—Weight and sufficiency.***Cross-References.*

Question for jury, see post, § 40.

Confessions, see "Criminal Law," §§ 534, 538.

Corpus delicti to render confession admissible, see "Criminal Law," § 535.

Testimony of accomplices and co-defendants, see "Criminal Law," §§ 507, 510, 511.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 38. Trial.***Cross-Reference.*

Grounds for continuance, see "Criminal Law," §§ 589, 595, 598.

**§ 39.—Conduct in general.***Cross-References.*

Application of personal knowledge of jurors, see "Criminal Law," § 862.

Argument of counsel, see "Criminal Law," §§ 720, 721, 721½, 722.

Counsel for prosecution, see "Criminal Law," § 639.

Deliberation of jury, see "Criminal Law," § 857.

Presence of jury during argument as to admission of evidence, see "Criminal Law," § 671.

Remarks of judge, see "Criminal Law," § 655.

Separate trial of co-defendants, see "Criminal Law," § 620.

View by jury, see "Criminal Law," § 651.

**§ 40.—Questions for jury.***Cross-References.*

Assumption as to facts, see "Criminal Law," § 761.

Instructions as to duties of jury, see "Criminal Law," § 768.

Instructions as to inferences from evidence, see "Criminal Law," § 759.

Opinion as to facts, see "Criminal Law," § 762.

Sufficiency of evidence in general, see "Criminal Law," § 741.

**§ 41.—Instructions.***Cross-References.*

Applicability to case, see "Criminal Law," § 814.

Argumentative instructions, see "Criminal Law," § 782.

Circumstantial evidence, see "Criminal Law," § 784.

Confessions and admissions, see "Criminal Law," § 781.

Construction of charge as a whole, see "Criminal Law," § 822.

Credibility of witnesses, see "Criminal Law," §§ 785, 786.

Doubt of individual juror, see "Criminal Law," § 798.

Requests, see "Criminal Law," § 824.

Testimony of accomplices, see "Criminal Law," § 780.

**§ 42.—Verdict.***Cross-References.*

Co-defendants, see "Criminal Law," § 877.

Several counts, see "Criminal Law," § 878.

**§ 43. New trial.***Cross-Reference.*

Estoppel to allege error, see "Criminal Law," § 1137.

**§ 44. Appeal and error.***Cross-References.*

Disposition of cause on appeal, see "Criminal Law," § 1181.

Harmless error, see "Criminal Law," § 1169.

Presumptions on appeal, see "Criminal Law," § 1144.

Review of discretion of court, see "Criminal Law," § 1153.

Review of questions of fact, see "Criminal Law," § 1159.

(a) Under Acts 1852, c. 63 (see Code, art. 75, § 9), prohibiting the reversal of a judgment for any matter of cause which might have been the subject of demurrer to the indictment, a conviction of arson will not be reversed for failure to allege in the indictment that the burning was done maliciously. —Kellenbeck v. State, 10 Md. 431, 49 Am. Dec. 166.

**§ 45. Sentence and punishment.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**ART.***Cross-References.*

Judicial notice of matters of art and skill, see "Evidence," § 19.

Prior state of art as affecting construction of patent, see "Patents," § 161.

Subjects of copyright, see "Copyrights," §§ 3-10.

Subjects of patents for invention, see "Patents," §§ 5-9.

*Annotation.*

1 Words and Phrases, 510, 511.

**ARTESIAN WELLS.***Cross-References.*

See "Waters and Water Courses," § 102.

Taxation by towns for sinking artesian wells, see "Taxation," § 38.

*Annotation.*

1 Words and Phrases, 511.

**ARTICLES.***Cross-References.*

- Of association, see "Corporations," §§ 18, 40, 373, 644.  
 Of association of gravel road companies, see "Turnpikes and Toll Roads," § 6.  
 Partnership articles, see "Partnership," §§ 22, 71, 225.  
 Shipping articles, see "Seamen," § 7.

*Annotation.*

- 1 Words and Phrases, 511-515.

**ASPORTATION.***Cross-References.*

- Element of false pretense, see "False Pretenses," § 4.  
 Element of larceny, see "Larceny," §§ 17, 34, 62, 75.

*Annotation.*

- 1 Words and Phrases, 532.

**ASSAULT AND BATTERY.***Scope-Note.*

[INCLUDES acts of violence towards the person of another, either with or without actual touching or striking, not constituting an element in, or attempt to commit, any other specific injury or offense; justification or excuse for such acts; circumstances of aggravation; and liabilities and remedies therefor, civil or criminal.

[EXCLUDES assaults in connection with unlawful arrest (see "*False Imprisonment*"); assaults committed in resisting officer or obstructing process (see "*Obstructing Justice*"); assaults committed with intent or in attempting to perpetrate some other offense (see "*Homicide*"; "*Rape*"; "*Robbery*"); and convictions of assault in prosecutions for other offenses (see "*Indictment and Information*"). For complete list of matters excluded, see cross-references, post.]

*Analysis.***I. Civil Liability.****(A) ACTS CONSTITUTING ASSAULT OR BATTERY AND LIABILITY THEREFOR.**

- § 1. Nature and elements of assault and battery.
- § 2. — In general.
- § 3. — Intent and malice.
- § 4. — Ability to execute intent.
- § 5. — Overt act in general.
- § 6. — Unlawful act.
- § 7. — Excessive force in doing lawful act.
- § 8. Defenses.
- § 9. — In general.
- § 10. — Exercise of authority or duty.
- § 11. — Consent.
- § 12. — Provocation.
- § 13. — Self-defense.
- § 14. — Defense of another.
- § 15. — Defense of property.
- § 16. — Accident.
- § 17. Persons entitled to use.
- § 18. Persons liable.

**(B) ACTIONS.**

- § 19. Grounds and conditions precedent.
- § 20. Jurisdiction and venue.
- § 21. Time to sue and limitations.
- § 22. Parties.

**I. Civil Liability—Continued.****(B) ACTIONS—Continued.**

- § 23. Process.
- § 24. Pleading.
- § 25. Evidence.
- § 26. — Presumptions and burden of proof.
- § 27. — Admissibility in general.
- § 28. — Intent and malice.
- § 29. — Character and physical condition of parties.
- § 30. — Provocation or justification.
- § 31. — Nature and circumstances of act.
- § 32. — Extent of injury.
- § 33. — Aggravation of damages.
- § 34. — Mitigation of damages.
- § 35. — Weight and sufficiency.
- § 36. Damages.
- § 37. — Measure in general.
- § 38. — Elements of compensation.
- § 39. — Exemplary.
- § 40. — Amount awarded.
- § 41. Trial.
- § 42. — Questions for jury.
- § 43. — Instructions.
- § 44. — Verdict.
- § 45. Judgment and review.
- § 46. Costs.

**II. Criminal Responsibility.****(A) OFFENSES.**

- § 47. Nature and elements of criminal assault.
- § 48. — In general.
- § 49. — Intent and malice.
- § 50. — Ability to execute intent.
- § 51. — Overt act in general.
- § 52. — Unlawful act.
- § 53. — Use of weapons.
- § 54. Aggravated assault.
- § 55. Assault with intent to do great bodily harm.
- § 56. Assault with dangerous or deadly weapon.
- § 57. Shooting.
- § 58. Stabbing or other wounding.
- § 59. Indecent assault.
- § 60. Degrees.
- § 61. Attempts.
- § 62. Defenses.
- § 63. — In general.
- § 64. — Exercise of authority or duty.
- § 65. — Consent.

**II. Criminal Responsibility—Continued.**

**(A) OFFENSES—Continued.**

- § 66. — Provocation.
- § 67. — Self-defense.
- § 68. — Defense of another.
- § 69. — Defense of property.
- § 70. — Accident.
- § 71. Persons liable.

**(B) PROSECUTION AND PUNISHMENT.**

- § 72. Preliminary proceedings.
- § 73. Indictment or information.
- § 74. — Requisites and sufficiency in general.
- § 75. — Intent and malice.
- § 76. — Description of person assaulted.
- § 77. — Acts constituting assault.
- § 78. — Matter constituting aggravation or special form of assault.
- § 79. — Attempt.
- § 80. — Issues, proof, and variance.
- § 81. Evidence.
- § 82. — Presumptions and burden of proof.
- § 83. — Admissibility in general.
- § 84. — Intent and malice.
- § 85. — Character and physical condition of parties.
- § 86. — Provocation or justification.
- § 87. — Motive.
- § 88. — Threats, preparations, and previous attempts.
- § 89. — Nature and circumstances of act.
- § 90. — Extent of injury.
- § 91. — Weight and sufficiency in general.
- § 92. — Aggravated assault, or special form of assault.
- § 93. Trial.
- § 94. — Conduct in general.
- § 95. — Questions for jury.
- § 96. — Instructions.
- § 97. — Verdict.
- § 98. New Trial.
- § 99. Appeal and Error.
- § 100. Sentence and punishment.

*Cross-References.*

As provocation for homicide, see "Homicide," §§ 44, 48.  
 By master on servant as ground for abandonment of employment, see "Master and Servant," § 29.  
 By servant on fellow servant as ground for discharge, see "Master and Servant," § 30.

Homicide in commission of or attempt to commit assault, see "Homicide," § 68.  
 Homicide in resisting assault, see "Homicide," § 54.  
 Libelous publications concerning assault, see "Libel and Slander," § 7.  
 On arresting officer as evidence of guilt, see "Criminal Law," § 353.

## I. CIVIL LIABILITY.

### Cross-References.

- Criminal act as affording right of action, see "Action," § 5; "Criminal Law," § 30.
- Ejection of passenger or intruder from train, see "Carriers," §§ 350-386.
- Injury to bystanders while committing assault, see "Torts," § 7.
- Liability of carrier for act of employe in assaulting passenger, see "Carriers," § 283.
- Liability of carrier for assault on passenger by fellow passenger, see "Carriers," § 284.
- Liability of carrier for assault on passenger by third persons, see "Carriers," § 284.
- Liability of husband for assault by wife, see "Husband and Wife," §§ 102-105.
- Liability of husband for assault on wife, see "Husband and Wife," § 53.
- Liability of innkeeper for assault on guest by servant, see "Innkeepers," § 10.
- Liability of master for assault by servant, see "Master and Servant," §§ 302, 306.
- Liability of prison officer for assaults on prisoners, see "Prisons," § 10.
- Liability of railroad company for assault by employe on licensee or trespasser, see "Railroads," § 281.
- Recovery in civil action as bar to prosecution, see "Criminal Law," § 43.
- Right of action by master for assault on slave, see "Slaves," § 5.
- Trespass to the person, see "Trespass," § 4.

### (A) ACTS CONSTITUTING ASSAULT OR BATTERY AND LIABILITY THEREFOR.

#### § 1. Nature and elements of assault and battery.

#### § 2.— In general.

(a) One who shakes his fist in the face of another, within striking distance, commits an assault.—*Handy v. Johnson*, 5 Md. 450.

#### § 3.— Intent and malice.

##### Cross-References.

- Admissibility of evidence, see post, § 28.
- In resisting trespass, see post, § 15.

##### Annotation.

Intent as an element of simple assault or assault and battery.—14 L. R. A. 226, note.

(a) S., having delivered certain laundered blankets to plaintiff without collecting charges, returned, asked for the blankets, and told plaintiff he was going to take them. Plaintiff resisted, put her hands on the blankets, which lay on a chair near that on which she was sitting, when S. stated that, if she did not take her hands off the blank-

ets, he would call a policeman and have her arrested. She turned to look for the policeman, and, as she did so, S. took the blankets and went out. While he was trying to take the blankets from the chair, his knee came in contact with her knee, causing her no pain, but she, being enceinte, suffered a subsequent hemorrhage from the shock. *Held*, that since the mere touching of one's person by another unless willful or in anger, or in a contemptuous or insolent manner, does not constitute a battery, such facts were insufficient to justify a recovery for assault and battery.—*Steinman v. Baltimore Antiseptic Steam Laundry Co.*, 109 Md. 62, 71 Atl. 517.

#### § 4.— Ability to execute intent.

(a) One who shakes his fist in the face of another, within striking distance, commits an assault.—*Handy v. Johnson*, 5 Md. 450.

#### § 5.— Overt act in general.

#### § 6.— Unlawful act.

#### § 7.— Excessive force in doing lawful act.

##### Cross-References.

- Instructions, see post, § 43.
- Making arrest, see post, § 10.
- Question for jury, see post, § 42.
- Ejection of passenger from train, see "Carriers," § 365.

#### § 8. Defenses.

##### Cross-References.

- Instructions, see post, § 43.
- Counterclaim, see "Set-Off and Counterclaim," §§ 29, 34.

#### § 9.— In general.

#### § 10.— Exercise of authority or duty.

##### Cross-References.

- Instructions, see post, § 43.
- Questions for jury, see post, § 42.
- Ejection of passenger, see "Carriers," § 365.

#### § 11.— Consent.

##### Cross-References.

- Evidence, see post, § 35.
- Instructions, see post, § 43.
- Question for jury, see post, § 42.

##### Annotation.

Consent as justification for assault.—15 L. R. A. 853, note.

#### § 12.— Provocation.

##### Cross-References.

- Admissibility of evidence, see post, § 30.
- Question for jury, see post, § 42.

Assault on passenger by carriers' employes, see "Carriers," § 283.

*Annotation.*

Provocation less than an assault, as a defense to a civil action for an assault and battery.—38 L. R. A. (N. S.) 516, note.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 13.—Self-defense.**

*Cross-References.*

Instructions, see post, § 43.

Questions for jury, see post, § 42.

Assault on passenger by carrier's employes, see "Carriers," § 283.

(a) In an action for assault and battery, it was proper to instruct that, if defendant assaulted and beat plaintiff, plaintiff should recover unless he first assaulted defendant, or defendant acted in self-defense; that is to say, that the circumstances under which defendant acted would have induced a reasonable man of average prudence to make a prior assault to protect himself.—Zell v. Dunaway, 115 Md. 1, 80 Atl. 215.

(b) To justify an assault and battery on the ground of belief that plaintiff intended to injure defendant, the belief must have been such as a reasonable person would entertain under like circumstances.—Zell v. Dunaway, 115 Md. 1, 80 Atl. 215.

**§ 14.—Defense of another.**

**§ 15.—Defense of property.**

*Cross-Reference.*

Excessive force, see ante, § 7.

(a) The owner of land may expel, with reasonable force, a wrongful occupant, without being liable in a civil action, although he might be liable for breach of the peace or for forcible entry.—Manning v. Brown, 47 Md. 506.

**§ 16.—Accident.**

**§ 17. Persons entitled to sue.**

*Cross-Reference.*

Husband or wife or both, see "Husband and Wife," § 209.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 18. Persons liable.**

*Cross-References.*

See "Carriers," §§ 283, 284; "Husband

and Wife," §§ 53, 102-105; "Innkeepers," § 10; "Master and Servant," §§ 302, 306; "Railroads," § 281.

Evidence, see post, § 35.

Evidence presenting question for jury, see post, § 42.

Instructions, see post, § 43.

Pleading, see post, § 24.

Prison or jail officers, see "Prisons," § 10.

(a) In an action against the superintendent of a house of correction for assault and battery alleged to have been committed on plaintiff while an inmate of the institution, it appeared from plaintiff's testimony that he was taken before defendant and accused of making a disturbance, and that defendant told another person to punish and beat plaintiff, whereupon the other took him away, and, in the absence of defendant, whipped plaintiff with a cat o' nine tails. *Held*, that there was nothing to show that defendant authorized or sanctioned an assault and battery, and that it was proper to take the case from the jury.—Martin v. Moore, 99 Md. 41, 57 Atl. 671.

(b) If plaintiff entered a store, in which defendants kept a postoffice and general store, to inquire about a car he had ordered, and one of the defendants called him a liar and a thief, and told the other defendant, who was the postmaster, to throw him out, which the latter immediately proceeded to do, the defendants would be jointly liable for the assault.—Sellman v. Wheeler, 95 Md. 751, 54 Atl. 512.

**(B) ACTIONS.**

*Cross-References.*

Cross-actions, see "Set-Off and Counterclaim," § 10.

Joinder of causes of action, see "Action," §§ 38-60.

Malicious actions, see "Malicious Prosecution," § 25.

Right of action as claim provable against bankrupt's estate, see "Bankruptcy," § 320.

**§ 19. Grounds and conditions precedent.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 20. Jurisdiction and venue.**

*Cross-References.*

See "Venue," § 22.

Jurisdiction of justices' courts, see "Justices of the Peace," § 88.

Jurisdiction of municipal court, see "Courts," § 188.



(a) Plaintiff need not prove the battery to have been committed in the particular place laid in the declaration; it is sufficient if proved to have been in the county.—*Miller v. McKee*, 3 H. & McH. 593.

(b) Actions for assault and battery are transitory.—*Redgrave v. Jones*, 1 H. & McH. 195.

## § 21. Time to sue and limitations.

### *Cross-References.*

See "Limitation of Actions," § 31.

Applicability to action for wrongful ejection from car, see "Carriers," § 379.

Disability affecting limitations, see "Limitation of Actions," § 76.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 22. Parties.

### *Cross-Reference.*

Husband or wife, see "Husband and Wife," § 209.

(a) If an assault be committed by two, the injured party may sue them jointly; and if, in the first instance, one be sued, and the other is not, but is brought in on the renewal of the writ, on motion the court may consolidate the cases, though they stand separately on the docket.—*Mitchell v. Smith*, 4 Md. 403.

## § 23. Process.

## § 24. Pleading.

### *Cross-References.*

Applicability of instructions to pleadings, see post, § 43.

Amendment, see "Pleading," § 259.

Grounds for demurrer, see "Pleading," § 193.

Pleading damages, see "Damages," § 143.

(a) Plaintiff may show that, as a result of the assault, he had become subject to fits, although such fact was not specially alleged as a ground of special damage.—*Sloan v. Edwards*, 61 Md. 89.

(b) Where issue is joined on the general issue plea, proof of the day laid in the declaration is not material, but proof of the trespass on any day before suit brought is sufficient.—*Sellers v. Zimmerman*, 18 Md. 255.

(c) Where plaintiff replied *de injuria* to a plea of son assault demesne, it was held to amount to a traverse of the whole plea, and

that plaintiff, without a new assignment or special replication, could prove that defendant's battery was excessive.—*Gaither v. Blowers*, 11 Md. 536.

(d) Where defendant pleads son assault demesne, plaintiff can give no evidence of an assault except on the day laid in the declaration, whether defendant gives evidence in support of his plea or not.—*Gibson v. Fleming*, 1 H. & J. 483.

## § 25. Evidence.

### *Cross-References.*

Acts and statements of person injured as *res gestæ*, see "Evidence," §§ 125-128.

Admissions, see "Evidence," § 205.

Demonstrative evidence, see "Evidence," §§ 188-199.

Negative testimony, see "Evidence," § 147.

Pecuniary condition of defendant, see

"Damages," § 181.

Pecuniary condition of plaintiff, see

"Damages," § 171.

*Res gestæ*, see "Evidence," §§ 118-128.

Silence of plaintiff after assault, see "Evidence," § 220.

## § 26.— Presumptions and burden of proof.

### *Cross-References.*

Instructions, see post, § 43.

Assault causing death, see "Death," § 58.

(a) In an action for an assault and battery, the burden is on defendants to prove the truth of all the matters set up in their pleas of confession and avoidance.—*Sellman v. Wheeler*, 95 Md. 751, 54 Atl. 512.

(b) The burden is on plaintiff to establish the assault and resulting injury.—*Sellman v. Wheeler*, 95 Md. 751, 54 Atl. 512.

## § 27.— Admissibility in general.

(a) In an action in which the defense was that plaintiff was trespassing on defendant's land, and plaintiff set up a right of way over the land, the testimony of a witness that a road existed near the place of the alleged assault is precise enough to go to the jury, as tending to establish the right of way, in the absence of objection on account of indefiniteness. The right of plaintiff does not depend on his being at the time in the exact line of the road, as he might have been driven or diverted from it by the act of defendant.—*Du Val v. Du Val*, 21 Md. 149.

(b) If, in a suit for a joint assault and

battery, plaintiff severs his action, all the facts occurring at the time of the assault and battery may go to the jury at the trial of either of the actions.—*Barnes v. Gray*, 5 H. & J. 486.

### § 28.—Intent and malice.

(a) Any acts or declarations indicative of the existence of malice or ill will on the part of defendant towards plaintiff at the time of the wrong committed may be given in evidence to prove malice.—*Byers v. Horner*, 47 Md. 23.

(b) The jury are bound to consider, in deciding the question of the intent wherewith the blow was struck, any declarations or circumstances tending to indicate a want of intention to do violence or injury.—*Handy v. Johnson*, 5 Md. 450.

(c) If, in a suit for a joint assault and battery, plaintiff severs his action, all the facts relative to intent and malice may go to the jury at the trial of either of the actions.—*Barnes v. Gray*, 5 H. & J. 486.

### § 29.—Character and physical condition of parties.

#### *Cross-Reference.*

Mitigation of damages, see post, § 34.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 30.—Provocation or justification.

(a) Assuming that a witness to an assault and battery, who stood beside a previous witness who professed to have seen plaintiff jump from his buggy, and, "as he supposed," assault defendant, answered a question as to whether it was possible from the position in which they stood to have seen plaintiff jump out of his buggy, by saying that his vision at long range was very good, and he could not tell whether a man jumped or fell out of a wagon at that distance with the obstructions that were there, there was no error in allowing the question, as the answer tended to aid the jury to test the accuracy of the previous witness' evidence, the conditions under which they saw the transaction being identical; but, in view of defendant's admission that he struck the first blow, the evidence was immaterial.—*Stockham v. Malcolm*, 111 Md. 615, 74 Atl. 569.

(b) Where, in a suit for assault and battery, there was no evidence that plaintiff had knuckles in his hand, or moved as if to draw them from his person, or made any overt attack or hostile demonstration giving defendant reasonable ground to suppose he was in imminent danger, evidence as to defendant not knowing anything about plaintiff using or carrying knuckles was properly excluded.—*Stockham v. Malcolm*, 111 Md. 615, 74 Atl. 569.

(c) Evidence that plaintiff had said that he did not think defendant always in his right mind is inadmissible, where there is no evidence that it was communicated to defendant.—*Gaither v. Blowers*, 11 Md. 536.

### § 31.—Nature and circumstances of act.

(a) Where the assault resulted from an altercation involving a question of veracity between the parties, the defendant asserting that he had no conversation with the plaintiff in regard to a certain transaction, and the latter asserting that he had, the plaintiff may show that the truth of the matter in dispute was with him.—*Marker v. Miller*, 9 Md. 338.

### § 32.—Extent of injury.

(a) Testimony by a physician, in an action for assault, that he examined plaintiff, who came to him complaining of a pain in his testicle; that he found him suffering from an enlargement of the testicle, and suggested treatment, and stated that if it continued he would have to have an operation performed; that he did not thoroughly diagnose the case; that the next time he examined plaintiff he saw that an operation had been performed; that he knew nothing about the cause of the trouble—was not irrelevant and immaterial.—*Sellman v. Wheeler*, 95 Md. 751, 54 Atl. 512.

### § 33.—Aggravation of damages.

(a) The jury may consider the pecuniary condition of the parties, their position in society, and any circumstances showing either vindictiveness or the want of it.—*Sloan v. Edwards*, 61 Md. 89.

(b) Where exemplary damages are recoverable, the pecuniary circumstances of the

defendant may be taken into consideration.—*Sloan v. Edwards*, 61 Md. 89.

(c) Plaintiff may introduce evidence that he is a laboring man, to increase his damages.—*Gaither v. Blowers*, 11 Md. 536.

(d) Other trespasses to plaintiff's person, or to that of his wife, children, or servants, if committed at the time of the principal trespass (the same being laid in the declaration), may be given in evidence to increase the damages, as may also defendant's conduct and language at the same time, as proving his malice.—*Shafer v. Smith*, 7 H. & J. 67.

(e) Declarations of defendant of his criminal intentions against plaintiff are proper evidence to aggravate the damages sustained by plaintiff.—*Pratt v. Ayler*, 4 H. & J. 448.

#### § 34.—Mitigation of damages.

(a) The defendant, in mitigation of damages for an assault and battery, may rely on the *res gestæ*, although, if pleaded, it would amount to a justification, and require a special plea.—*Byers v. Horner*, 47 Md. 23.

(b) To entitle defendant to give evidence of provocation in mitigation of damages, the provocation must be so recent and immediate as to induce a presumption that the violence done was committed under immediate influence of the feelings and passion excited by it.—*Gaither v. Blowers*, 11 Md. 536.

(c) Evidence of declarations of plaintiff respecting defendant is not admissible in mitigation of damages unless they are shown to have been communicated to him.—*Gaither v. Blowers*, 11 Md. 536.

(d) Defendant pleaded the general issue and son assault demesne, and, in mitigation of damages, offered to prove that plaintiff had grossly abused two persons, friends of defendant, and, to prove the abuse against them false, offered to give evidence of the quarrel, and the original cause thereof, between plaintiff and defendant's friends, which happened some time anterior to the assault and battery. *Held*, that the evidence was inadmissible.—*Anderson v. Johnson*, 3 H. & J. 162.

#### § 35.—Weight and sufficiency.

##### *Cross-References.*

To present question for jury, see post, § 42.

Nature and cause of injury, see "Damages," § 185.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 36. Damages.

##### *Cross-References.*

See ante, § 15.

Evidence admissible in aggravation of damages, see ante, § 33.

Evidence admissible in mitigation of damages, see ante, § 34.

Instructions, see post, § 43.

Aggravation of injury received from assault by subsequent disease, see "Damages," § 34.

Aggravation of previous injury or disease, see "Damages," § 33.

Assault on passenger, see "Carriers," § 319.

Certainty as to amount of damages, see "Damages," § 6.

Demonstrative evidence, see "Evidence," §§ 188-199.

Speculative damages, see "Damages," § 32.

Time to which recoverable, see "Damages," § 225.

#### § 37.—Measure in general.

(a) In awarding damages for assault and battery the jury may allow such damages as in their opinion will be fair and just compensation for the injuries inflicted.—*Zell v. Dunaway*, 115 Md. 1, 80 Atl. 215.

#### § 38.—Elements of compensation.

(a) In awarding damages for assault and battery, the jury may consider plaintiff's health and condition before his injury, as compared with his injured condition, whether the injury is permanent, his physical and mental suffering, and defendant's condition in life and pecuniary circumstances.—*Zell v. Dunaway*, 115 Md. 1, 80 Atl. 215.

(b) Damages may be awarded for the natural injurious consequences of an assault and battery that may continue after the trial, as well as for those that have ensued up to the time of trial.—*Sloan v. Edwards*, 61 Md. 89.

(c) Damages for mental pain and suffering connected with, and following as the natural consequence of, an assault, may be recovered.—*Sloan v. Edwards*, 61 Md. 89.

**§ 39.— Exemplary.***Cross-References.*

See ante, §§ 33, 38.

Instructions, see post, § 43.

Question for jury, see post, § 42.

Assault on passenger, see "Carriers," § 319.

Effect of criminal prosecution, see "Damages," § 90.

Master's liability for assault by servant, see "Master and Servant," § 331.

(a) Punitive damages are recoverable for a wanton, unprovoked, and excessive assault and battery.—*Zell v. Dunaway*, 115 Md. 1, 80 Atl. 215.

**§ 40.— Amount awarded.***Cross-Reference.*

Assault on passenger, see "Carriers," § 319.

**§ 41. Trial.***Cross-Reference.*

Right to open and close, see "Trial," § 25.

**§ 42.— Questions for jury.**

(a) Where one sued for assault and battery claimed to have acted under the belief that plaintiff intended to injure him, whether the belief was reasonable was a question for the jury.—*Zell v. Dunaway*, 115 Md. 1, 80 Atl. 215.

(b) Where defendant attempted to get into plaintiff's house, and, after having been refused admittance, forcibly raised a window for the purpose of effecting an entrance, and through it struck at plaintiff three or four times, she having refused to admit him, and hit her one violent blow, from which she suffered a great deal for two or three weeks, the question of exemplary damages is properly submitted to the jury.—*Thillman v. Neal*, 88 Md. 525, 42 Atl. 242.

(c) Whether or not defendant has supported his plea of son assault demesne is for the consideration of the jury.—*Barnes v. Gray*, 5 H. & J. 436.

**§ 43.— Instructions.***Cross-Reference.*

Assumption of facts in instructions, see "Trial," § 191.

(a) In a suit for assault and battery, the court properly instructed that if defendant pulled plaintiff out of his wagon on the public road on the occasion referred to in the evidence, and struck him, the verdict must

be for plaintiff, notwithstanding he applied to defendant an opprobrious epithet referred to, as it did not afford a legal justification for such conduct of defendant, and, in connection therewith, that plaintiff must prove by a preponderance of the evidence that defendant made the assault, and plaintiff suffered the damage charged in the declaration.—*Stockham v. Malcolm*, 111 Md. 615, 74 Atl. 569.

(b) Where, in a suit for assault and battery, the court denied the right to punitive damages by rejecting one of plaintiff's prayers, and granted another authorizing consideration of defendant's condition in life and pecuniary circumstances in estimating compensatory damages, its rulings were inconsistent, as evidence of defendant's station and pecuniary condition is admissible only where punitive or exemplary damages are in issue, and not where plaintiff is limited to compensatory damages.—*Stockham v. Malcolm*, 111 Md. 615, 74 Atl. 569.

(c) In a suit for assault and battery, defendant was held to have obtained the full benefit of the provocation furnished by the plaintiff's alleged offensive language and participation in the fight immediately following the assault, by the granting of prayers instructing the jury to consider these two facts, if they found them to be such, in mitigation of damages.—*Stockham v. Malcolm*, 111 Md. 615, 74 Atl. 569.

(d) In view of defendant's admission that he seized plaintiff by the throat while sitting in his buggy, and struck him as soon as he alighted or was pulled therefrom, it would have been improper to have granted defendant's prayer constructed on the theory that plaintiff was the aggressor.—*Stockham v. Malcolm*, 111 Md. 615, 74 Atl. 569.

(e) In an action to recover damages for an assault, an instruction using the words, "the unlawful act of the defendant," is not erroneous, as allowing the jury to consider a trespass committed by defendant on plaintiff's premises at the same time, where the court also used the words, "if they shall find the defendant assaulted and struck her."—*Thillman v. Neal*, 88 Md. 525, 42 Atl. 242.

(f) The instruction referred to in the preceding paragraph is not erroneous in leaving it to the jury to determine what constitutes an "assault," the term not being used in its technical sense.—*Thillman v. Neal*, 88 Md. 525, 42 Atl. 242.

(g) Requests for instructions requiring the jury to decide what is, in law, an assault, are properly refused.—*Handy v. Johnson*, 5 Md. 450.

#### § 44.—Verdict.

##### *Cross-Reference.*

On several counts or issues, see "Trial," § 330.

(a) A joint declaration alleged that both defendants committed the assault. Each defendant separately pleaded non cul., and each severally pleaded that plaintiff committed the first assault on one of defendants, who was the father of the other, on all which pleas issue was joined. The verdict was that, "as to first issue, defendants are guilty of the premises within charged on him, in manner and form as plaintiff hath within alleged," and, "as to the other issue, that defendants, of their own wrong, and without any such cause as they within by pleading hath alleged, assaulted plaintiff, in manner and form as he hath within alleged." *Held*, that this was a substantial finding by the jury on the matters in issue, and sufficient to support a final judgment in favor of plaintiff, notwithstanding the grammatical errors of the verdict.—*Mitchell v. Smith*, 4 Md. 403.

#### § 45. Judgment and review.

##### *Cross-Reference.*

Discharge of judgment by debtor's discharge in bankruptcy, see "Bankruptcy," § 424.

#### § 46. Costs.

##### *Cross-Reference.*

Action against master for assault by servant, see "Master and Servant," § 335.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## II. CRIMINAL RESPONSIBILITY.

##### *Cross-References.*

See "Affray"; "Mayhem."

Assault on alien, see "Aliens," § 4.

Assault with intent to commit burglary, see "Burglary," § 2.

Assault with intent to commit sodomy, see "Sodomy."

Assault with intent to kill, see "Homicide," §§ 84-100, 141.

Assault with intent to rape, see "Rape," §§ 16, 34, 53.

Assault with intent to rob, see "Robbery," §§ 13, 19.

Conflicting regulations by state and municipality, see "Municipal Corporations," § 592.

Conspiracy to commit assault, see "Conspiracy," § 28.

Creation and definition of offense, see "Criminal Law," § 13.

Resisting officers, see "Obstructing Justice," § 1.

### (A) OFFENSES.

#### § 47. Nature and elements of criminal assault.

#### § 48.—In general.

#### § 49.—Intent and malice.

##### *Cross-References.*

See post, § 61.

Admissibility of evidence, see post, § 84.

Allegations in indictment, see post, § 75.

Instructions, see post, § 96.

Questions for jury, see post, § 95.

#### § 50.—Ability to execute intent.

##### *Cross-Reference.*

Evidence presenting question for jury, see post, § 95.

#### § 51.—Overt act in general.

##### *Cross-Reference.*

Harmless error, see "Criminal Law," § 1169.

#### § 52.—Unlawful act.

#### § 53.—Use of weapons.

##### *Annotation.*

Pointing unloaded firearm as assault.—15 L. R. A. (N. S.) 1272; 41 L. R. A. (N. S.) 181, notes.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 54. Aggravated assault.

##### *Cross-References.*

See "Homicide," § 95; "Rape," § 16.

Allegations in indictment or information, see post, § 78.

Consent as defense, see post, § 65.

Instructions, see post, § 96.

Weight and sufficiency of evidence, see post, § 92.

### § 55. Assault with intent to do great bodily harm.

#### *Cross-References.*

Allegations in indictment or information, see post, § 78.  
Instructions, see post, § 96.  
Questions for jury, see post, § 95.  
Weight and sufficiency of evidence, see post, § 92.

### § 56. Assault with dangerous or deadly weapon.

#### *Cross-References.*

Allegations in indictment or information, see post, § 78.  
Instructions, see post, § 96.  
Questions for jury, see post, § 95.  
Weight and sufficiency of evidence, see post, § 92.  
Creation of offense, see "Criminal Law," § 13.  
Subject and title of act relating to pointing any firearm at another, see "Statutes," § 118.

#### *Annotation.*

Assault with deadly weapon.—41 L. R. A. (N. S.) 182, note.

### § 57. Shooting.

#### *Cross-References.*

Instructions, see post, § 96.  
Questions for jury, see post, § 95.  
Weight and sufficiency of evidence, see post, § 92.

### § 58. Stabbing or other wounding.

#### *Cross-References.*

Evidence, see post, § 92.  
Instructions, see post, § 96.

### 59. Indecent assault.

#### *Cross-References.*

Allegations in indictment or information, see post, § 78.  
As aggravated assault, see ante, § 54.  
Evidence presenting question for jury, see post, § 95.  
Instructions, see post, § 96.  
Weight and sufficiency of evidence, see post, § 92.

### § 60. Degrees.

#### *Cross-Reference.*

Evidence, see post, § 91.

### § 61. Attempts.

#### *Cross-Reference.*

Evidence, see post, § 91.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 62. Defenses.

#### *Cross-Reference.*

Drunkenness, see "Criminal Law," § 53.

### § 63.— In general.

#### *Annotation.*

Assault with intent to murder or kill by unlawful act aimed at another than the one injured.—37 L. R. A. (N. S.) 172, note.

Mistaken identity as justification for assault.—67 L. R. A. 565; 37 L. R. A. (N. S.) 172, notes.

Assault or homicide as affected by mistake as to identity of person assaulted.—33 L. R. A. (N. S.) 1070, note.

### § 64.— Exercise of authority or duty.

#### *Cross-Reference.*

Instructions, see post, § 96.

### § 65.— Consent.

#### *Cross-Reference.*

Evidence, see post, § 91.

#### *Annotation.*

Consent as justification for assault.—15 L. R. A. 854, note.

### § 66.— Provocation.

#### *Cross-References.*

Admissibility of evidence, see post, § 86.  
Evidence presenting question for jury, see post, § 95.  
Instructions, see post, § 96.

### § 67.— Self-defense.

#### *Cross-References.*

Instructions, see post, § 96.  
Question for jury, see post, § 95.

### § 68.— Defense of another.

### § 69.— Defense of property.

#### *Cross-References.*

Evidence presenting question for jury, see post, § 95.  
Instructions, see post, § 96.

### § 70.— Accident.

#### *Cross-References.*

See ante, § 67.  
Instructions, see post, § 96.

### § 71. Persons liable.

#### *Cross-References.*

See "Husband and Wife," § 54.  
Evidence, see post, § 91.

#### *Annotation.*

Criminal responsibility of children for assault.—36 L. R. A. 201, note.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## (B) PROSECUTION AND PUNISHMENT.

*Cross-References.*

Compelling calling of witness, see "Criminal Law," § 666.  
 Continuance, see "Criminal Law," §§ 598, 603.  
 Counsel for prosecution, see "Criminal Law," § 640.  
 Election between acts, see "Criminal Law," § 678.  
 Former jeopardy, see "Criminal Law," §§ 167, 169, 170, 176, 178, 184, 199, 200, 294.  
 Grounds for arrest of judgment, see "Criminal Law," § 971.  
 Jurisdiction, see "Criminal Law," §§ 90, 93, 96, 100.  
 Limitations, see "Criminal Law," § 160.  
 Limiting number of witnesses, see "Criminal Law," § 676.  
 Pleas, see "Criminal Law," §§ 295, 296.  
 Power to punish, see "Criminal Law," § 7.  
 Right to prosecute summarily, see "Criminal Law," §§ 248, 249.  
 Separate trial of co-defendants, see "Criminal Law," § 622.

**§ 72. Preliminary proceedings.***Cross-Reference.*

See "Criminal Law," §§ 205-260.

**§ 73. Indictment or information.***Cross-References.*

Aider by verdict, see "Indictment and Information," §§ 202, 203.  
 Amendment, see "Indictment and Information," § 160.  
 Assault with intent to rape, see "Rape," § 34.  
 Assault with intent to rob, see "Robbery," § 19.  
 Conclusion, see "Indictment and Information," § 32.  
 Conviction of offense included in charge, see "Indictment and Information," §§ 187, 189, 191.  
 Duplicity, see "Indictment and Information," § 125.  
 Election between counts, see "Indictment and Information," § 132.  
 Joinder of counts, see "Indictment and Information," §§ 128, 130.  
 Matters unknown to grand jury, see "Indictment and Information," § 184.  
 Necessity of indictment, see "Indictment and Information," § 3.  
 Omission of essential words, see "Indictment and Information," § 75.  
 Order on demurrer, see "Indictment and Information," §§ 151, 153.  
 Proper form of accusation, see "Indictment and Information," § 4.  
 Repugnancy, see "Indictment and Information," § 73.  
 Sufficiency of averments of venue, see "Indictment and Information," § 86.  
 Surplusage, see "Indictment and Information," § 119.

Variance between complaint and information, see "Indictment and Information," § 122.

**§ 74.— Requisites and sufficiency in general.****§ 75.— Intent and malice.****§ 76.— Description of person assaulted.**

(a) An indictment which charges defendant with committing an assault, without mentioning the name of the person on whom the assault was committed, and then goes on to charge that then and there the said D. was beaten, wounded, etc., is sufficient to inform defendant of the offense with which he is charged, and the party on whom it was committed.—*Harne v. State*, 39 Md. 552.

**§ 77.— Acts constituting assault.**

(a) Under an indictment charging an assault by unlawfully shooting at a person it is necessary to charge the intent with which the act is done in the words prescribed in the Code.—*State v. Elborn*, 27 Md. 483.

**§ 78.— Matter constituting aggravation or special form of assault.****§ 79.— Attempt.****§ 80.— Issues, proof, and variance.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 81. Evidence.***Cross-References.*

Acts and declarations of conspirators and co-defendants, see "Criminal Law," §§ 422, 423, 427.  
 Admissions, see "Criminal Law," §§ 406, 407.  
 Attempt to avoid arrest as evidence of guilt, see "Criminal Law," § 353.  
 Declarations as evidence, see "Criminal Law," §§ 415, 417, 418.  
 Documentary evidence, see "Criminal Law," §§ 437, 438.  
 Hearsay evidence, see "Criminal Law," § 420.  
 Incriminating others, see "Criminal Law," § 359.  
 Opinion evidence, see "Criminal Law," §§ 448, 450, 459, 463, 471.  
 Other offenses, see "Criminal Law," §§ 371, 374.  
 Res gestæ, see "Criminal Law," §§ 363, 364, 365, 366, 368.  
 Self-serving declarations, see "Criminal Law," § 413.

**§ 82.— Presumptions and burden of proof.***Cross-Reference.*

Instructions, see post, § 96.

## § 83.—Admissibility in general.

## § 84.—Intent and malice.

## § 85.—Character and physical condition of parties.

*Cross-Reference.*

See "Trespass," § 45.

## § 86.—Provocation or justification.

## § 87.—Motive.

## § 88.—Threats, preparations, and previous attempts.

## § 89.—Nature and circumstances of act.

## § 90.—Extent of injury.

## § 91.—Weight and sufficiency in general.

*Cross-References.*

Confessions, see "Criminal Law," § 534.

Identity of accused, see "Criminal Law," § 566.

Testimony of accomplices and co-defendants, see "Criminal Law," § 511.

Time of offense and limitations, see "Criminal Law," § 565.

Venue of prosecution, see "Criminal Law," § 564.

## § 92.—Aggravated assault, or special form of assault.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 93.—Trial.

*Cross-References.*

Argument and conduct of counsel, see "Criminal Law," §§ 717, 730.

Objection to evidence, see "Criminal Law," § 695.

Order of proof, see "Criminal Law," § 686.

Remarks of judge, see "Criminal Law," §§ 655, 656.

Right to open and close, see "Criminal Law," § 645.

Separate trial of co-defendants, see "Criminal Law," § 622.

## § 94.—Conduct in general.

## § 95.—Questions for jury.

*Cross-References.*

Conflicting evidence, see "Criminal Law," § 747.

Former jeopardy, see "Criminal Law," § 739.

Uncontroverted evidence, see "Criminal Law," § 744.

## § 96.—Instructions.

*Cross-References.*

Assumption as to facts, see "Criminal Law," § 761.

Harmless error, see "Criminal Law," §§ 1172, 1173.

Instructions on weight of evidence, see "Criminal Law," §§ 759, 763.

Requests, see "Criminal Law," §§ 824, 825, 829.

Requisites and sufficiency of instructions in general, see "Criminal Law," §§ 769-823.

## § 97.—Verdict.

*Cross-References.*

Co-defendants, see "Criminal Law," § 877.

Form and language in general, see "Criminal Law," § 875.

Harmless error, see "Criminal Law," § 1175.

On several counts, see "Criminal Law," § 878.

Specification of offense, see "Criminal Law," § 883.

## § 98.—New trial.

*Cross-Reference.*

Grounds in general, see "Criminal Law," §§ 918, 935, 938, 940.

## § 99.—Appeal and error.

*Cross-References.*

Amount of appeal bond, see "Criminal Law," §§ 260, 1011, 1023, 1076.

Harmless error, see "Criminal Law," §§ 1163, 1166½, 1169, 1170, 1170½, 1172, 1173, 1175.

Objections in lower court, see "Criminal Law," §§ 1030, 1038.

Presumptions on appeal, see "Criminal Law," § 1144.

Summary conviction, see "Criminal Law," § 260.

## § 100.—Sentence and punishment.

*Cross-References.*

Amendment of judgment record, see "Criminal Law," § 996.

Conformity of sentence to verdict, see "Criminal Law," § 992.

Description of offense in judgment record, see "Criminal Law," § 995.

Excessive fines, see "Criminal Law," § 1214.

For assault committed by rioters, see "Riot," § 8.

Imprisonment in addition to fine, see "Criminal Law," § 1215.

Nature and incidents of imprisonment, see "Criminal Law," § 1217.

Of husband for assault on wife, see "Husband and Wife," § 54.

Pardon, see "Pardon," § 9.

Presumptions on appeal, see "Criminal Law," § 1144.

Record on summary trial, see "Criminal Law," § 258.

Term of imprisonment in general, see "Criminal Law," § 1216.

What constitutes record of sentence, see "Criminal Law," § 994.

Working convict on highway, see "Convicts," § 7.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.



**ASSEMBLY.***Cross-References.*

- Constitutional guaranty of right of assembly, see "Constitutional Law," § 91.
- Disturbance, see "Disturbance of Public Assemblage."
- Legislative, see "States," §§ 24-40.
- Unlawful, see "Unlawful Assembly."

*Annotation.*

- 1 Words and Phrases, 544, 545.

**ASSENT.***Cross-References.*

- As affecting criminality of indecent exposure, see "Obscenity," § 3.
- As defense in trover, see "Trover and Conversion," § 22.
- As dispensing with necessity of allowance of appeal, see "Appeal and Error," § 358.
- As element of robbery, see "Robbery," § 8.
- By husband to criminal conversation with wife, see "Husband and Wife," § 342.
- By servant to discharge, see "Master and Servant," § 40.
- Conferring jurisdiction, see "Appeal and Error," § 21; "Courts," §§ 23-25; "Criminal Law," §§ 99, 1017; "Divorce," § 65; "Justices of the Peace," § 50.
- Consent decree in equity, see "Equity," § 416.
- Defense to abortion, see "Abortion," § 2.
- Effect on right of accused to discharge for delay in prosecution, see "Criminal Law," § 576.
- Of abutting owners to construction of street railroad, see "Street Railroads," § 26.
- Of board of town auditors and assessors to additional levy for highway purposes, see "Highways," § 127.
- Of cestui que trust to sale of trust property, see "Trusts," § 192.
- Of city to location of railroad, see "Railroads," § 47.
- Of consignor or owner of goods to limitation of carrier's liability, see "Carriers," § 155.
- Of creditors to discharge of insolvent, see "Insolvency," § 152.
- Of debtor to assignment, see "Assignments," § 58.
- Of executor to legacy, see "Executors and Administrators," § 291.
- Of female, defense to charge of abduction, see "Abduction," § 2.
- Of highway officers to use of highway by street railroad, see "Street Railroads," § 25.
- Of husband or wife to admission of testimony by the other, see "Witnesses," § 62.
- Of husband to conveyance of or contract affecting wife's separate property, see "Husband and Wife," §§ 166, 184.
- Of husband to mortgage or pledge of wife's separate property, see "Husband and Wife," §§ 169, 171.
- Of husband to wife's carrying on trade or business, see "Husband and Wife," § 94.

- Of landlord to assignment of lease, see "Landlord and Tenant," § 75.
- Of landowners to assessments for construction or repair of highways, see "Highways," § 134.
- Of landowner to improvements thereon as affecting right to lien, see "Mechanics' Liens," §§ 55-78.
- Of landowners to inclusion of land within village, see "Municipal Corporations," § 7.
- Of landowner to subcontract as affecting right of subcontractor or materialmen to mechanic's lien, see "Mechanics' Liens," § 99.
- Of Legislature to devise for charitable purposes, see "Wills," § 13.
- Of lessor to assignment of lease, see "Landlord and Tenant," § 76.
- Of mortgagee to transfer of property by mortgagor, see "Chattel Mortgages," § 219; "Mortgages," § 272.
- Of municipality to use of street by street railroad company, see "Street Railroads," § 24.
- Of municipality to use of streets by telegraph or telephone company, see "Telegraphs and Telephones," § 10.
- Of mutual benefit insurance association to change of beneficiary, see "Insurance," § 781.
- Of owner of property affected to making of public improvements, see "Municipal Corporations," § 280.
- Of owner of property as defense to action of trespass, see "Trespass," § 25.
- Of owner of property as defense to prosecution for larceny, see "Larceny," § 13.
- Of owner of property embezzled, allegations as to, in indictment, see "Embezzlement," § 26.
- Of owner of property to taking for private use, see "Eminent Domain," § 62.
- Of owner of property to taking for public use, see "Eminent Domain," § 280.
- Of owner or occupant of building as defense in prosecution for burglary, see "Burglary," § 15.
- Of parent of female abducted as question for jury, see "Abduction," § 15.
- Of parent or child as defense to kidnapping, see "Kidnapping," §§ 1, 4.
- Of parent or guardian to sale of liquor to minor, see "Intoxicating Liquors," § 159.
- Of parents or guardians to marriage, see "Marriage," § 19.
- Of parents to employment of child, see "Master and Servant," § 91; "Parent and Child," § 7.
- Of parties, as waiver of disqualification of judge, see "Judges," § 54.
- Of parties, as element of incest, see "Incest," § 7.
- Of parties to contracts in general, see "Contracts," §§ 15, 92-100.
- Of parties to contracts of novation, see "Novation," § 7.
- Of parties to creation of partnership, see "Partnership," § 18.
- Of parties to marriage, see "Marriage," § 18.

Of parties to selection of referee, see "Reference," § 40.  
 Of patentee to infringement, see "Patents," § 261.  
 Of person assaulted, as defense to civil action for assault, see "Assault and Battery," § 11.  
 Of person assaulted as defense to prosecution for assault, see "Assault and Battery," § 65.  
 Of person injured as defense to action of tort in general, see "Torts," § 17.  
 Of person slandered to finding of indictment against slanderer, see "Libel and Slander," § 152.  
 Of public authorities to location of cemetery, see "Cemeteries," § 9.  
 Of required number of jurors to verdict, see "Trial," § 321½.  
 Of Secretary of War to construction of bridges over navigable waters, see "Navigable Waters," § 20.  
 Of state legislature to construction of bridges over navigable waters, see "Navigable Waters," § 20.  
 Of state officers to quo warranto proceedings, see "Quo Warranto," § 44.  
 Of state to be sued, see "States," § 191.  
 Of stockholders to transfer of railroad property or franchises, see "Railroads," § 123.  
 Of surety to transactions between creditor and principal, see "Principal and Surety," § 128.  
 Of taxpayers or voters to issue of county bonds, see "Counties," § 178.  
 Of United States to be sued, see "United States," § 125.  
 Of voters to adoption of local option law, see "Intoxicating Liquors," § 27.  
 Time for hearing appeal, see "Appeal and Error," § 817.  
 To adoption of child, see "Adoption," § 7.  
 To alteration of instrument, see "Alteration of Instruments," § 12.  
 To alteration of municipal boundaries, see "Municipal Corporations," § 34.  
 To application for liquor license, see "Intoxicating Liquors," § 66.  
 To appointment of receiver, see "Receivers," § 31.  
 To assignment of insurance policy, see "Insurance," §§ 205-207, 345, 346.  
 To change of venue, see "Venue," § 56.  
 To dismissal of action or nonsuit, see "Dismissal and Nonsuit," § 16.  
 To dismissal of appeal from justice's court, see "Justices of the Peace," § 166.  
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 To issuance of receivers' certificates, see "Receivers," § 120.  
 To judgment, see "Judgment," §§ 72, 73.

To judgment in appellate court, see "Appeal and Error," §§ 1101, 1160.  
 To levy and sale of exempt property, see "Homestead," § 172.  
 To performance of extra work under municipal contract, see "Municipal Corporations," § 360.  
 To proceedings as estoppel to allege error therein, see "Criminal Law," § 1137.  
 To provisions of will at time of execution, see "Wills," § 11.  
 To reference, see "Divorce," § 143; "Reference," § 24.  
 To sale of land of decedent, see "Executors and Administrators," § 386.  
 To sale of school lands, see "Public Lands," § 54.  
 To striking out parties, see "Parties," § 65.  
 To substitution of parties, see "Parties," § 61.  
 To termination of prosecution maliciously instituted, see "Malicious Prosecution," § 35.  
 To terms of will as constituting election, see "Wills," § 794.  
 To transfer of prosecution to other court, see "Criminal Law," § 101.  
 To trial without jury, see "Jury," §§ 28, 29.  
 To use of premises by liquor dealer, see "Intoxicating Liquors," § 67.  
 To vacation of street, see "Municipal Corporations," § 657.  
 Want of consent of parent, element of offense of abduction, see "Abduction," § 1.  
 Want of consent to sexual intercourse as element of rape, see "Rape," §§ 9-13, 29-31.

#### Annotation.

1 Words and Phrases, 545-547.

### ASSESSMENT.

#### Cross-References.

Against estate held for life, see "Life Estates," § 18.  
 As incumbrance, see "Covenants," § 42.  
 Districts, see "Municipal Corporations," § 450; "Taxation," §§ 252-294.  
 For construction of fences, see "Fences," § 4.  
 For construction of turnpikes and toll roads by private corporations, see "Turnpikes and Toll Roads," § 10.  
 Of compensation for property taken for public use, see "Eminent Domain," §§ 166-265.  
 Of damages for breach of condition in bond, see "Bonds," § 138.  
 Of damages from public improvements, see "Municipal Corporations," §§ 401, 402.  
 Of damages in general, see "Damages," §§ 193-224.  
 Of expense of private roads, see "Private Roads."  
 Of expenses of public improvements, see "District of Columbia," § 16; "Drains," §§ 66-91; "Highways," §§ 132-150;

"Levees," §§ 22-29½; "Municipal Corporations," §§ 405-588.  
 Of members of beneficial association, see "Beneficial Associations," § 13.  
 Of taxes, see "Counties," § 193; "Highways," § 127; "Internal Revenue," § 25; "Intoxicating Liquors," § 92; "Licenses," § 30; "Municipal Corporations," §§ 971-974; "Schools and School Districts," § 103; "Taxation," §§ 295-500; "Towns," § 58.  
 Of value of partition fence by viewers, see "Fences," § 16.  
 On building and loan association stock, see "Building and Loan Associations," §§ 17-22.  
 On corporate stock, see "Corporations," §§ 89, 145, 175; "Insurance," § 39.  
 On members of club, see "Clubs," § 7.  
 On members of mutual benefit insurance association, see "Insurance," §§ 709, 731, 750-754.  
 On members of mutual insurance companies, see "Insurance," §§ 190-193, 195-197.  
 On members of unincorporated association, see "Joint-Stock Companies," § 11.  
 On policyholders in mutual insurance companies, see "Insurance," § 71.  
 Work on mining location, see "Mines and Minerals," § 23.

*Annotation.*

1 Words and Phrases, 549-555.

**ASSESSORS.**

*Cross-References.*

Tax assessors, see "Schools and School Districts," § 103; "Taxation," §§ 309-325; "Towns," § 58.

*Annotation.*

1 Words and Phrases, 556.

**ASSETS.**

*Cross-References.*

Inventory or schedule of assets accompanying assignment for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 71-75.

Marshaling, see "Marshaling Assets and Securities."

Of bankrupt, see "Bankruptcy," §§ 137-149.  
 Of dissolved corporation, see "Corporations," § 623.  
 Of estate of decedent, see "Executors and Administrators," §§ 38-73, 290.  
 Of insolvent bank, see "Banks and Banking," §§ 77, 287.  
 Of insolvent corporations in general, see "Corporations," § 561.  
 Of insolvent insurance company, see "Insurance," §§ 50, 70-72, 708.  
 Of partnership in general, see "Partnership," §§ 176-190.  
 Of partnership upon retirement or admission of partners, see "Partnership," §§ 232-234.

*Annotation.*

1 Words and Phrases, 556-559.

**ASSIGNATION.**

*Cross-Reference.*

Keeping place for, as nuisance, see "Nuisance," § 13.

**ASSIGNMENT OF DOWER.**

*Cross-Reference.*

See "Dower," §§ 54-115.

*Annotation.*

1 Words and Phrases, 576.

**ASSIGNMENT OF ERRORS.**

*Cross-References.*

See "Appeal and Error," §§ 718-754; "Certiorari," § 59; "Criminal Law," § 1129; "Justices of the Peace," § 165.  
 On appeal in admiralty, see "Admiralty," § 109.

On appeal in probate proceedings, see "Wills," § 371.

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Specification in briefs, see "Appeal and Error," § 758; "Criminal Law," § 1130.

Specification in petition for appeal or writ of error, see "Appeal and Error," § 362; "Criminal Law," § 1071.

*Annotation.*

1 Words and Phrases, 576-577.

**ASSIGNMENTS.**

*Scope-Note.*

[INCLUDES transfers of title to property or estates or interests therein or of other valuable rights in general, and more particularly transfers of debts or other rights in action; nature, requisites, validity, incidents, operation, and effect of such transfers; evidence relating thereto; instruments in writing by which such transfers are made, and delivery, acceptance, recording or registration, and construction thereof; and rights, duties, and liabilities of the parties between themselves and as to others.

[EXCLUDES transfers by or to particular classes of persons (see "Infants"; "Insane Persons"; and other specific heads); transfers of particular kinds of property, interests, rights, contracts, written instruments, etc. (see "Public Lands"; "Mines and

*Scope-Note—Continued.*

*Minerals*"; "Waters and Water Courses"; "Good Will"; "Trade-Marks and Trade-Names"; "Copyrights"; "Patents"; "Franchises"; "Corporations"; "Landlord and Tenant"; "Easements"; "Deeds"; "Mortgages"; "Chattel Mortgages"; "Contracts"; "Bonds"; "Bills and Notes"; "Insurance"; "Liens"; "Judgments"; and other specific heads); transfers fraudulent as to creditors or subsequent purchasers (see "*Fraudulent Conveyances*"); general assignments for the benefit of creditors (see "*Assignments for Benefit of Creditors*"); assignments in violation of or pursuant to insolvent or bankrupt laws (see "*Insolvency*"; "*Bankruptcy*"); assignments by imprisoned debtors to obtain their discharge (see "*Arrest*"; "*Execution*"); and intervention or substitution of assignees in pending actions (see "*Parties*"). For complete list of matters excluded, see cross-references, post.]

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- § 2. What law governs.
- § 3. Statutory provisions.
- § 4. Existence and possession of subject-matter.
- § 5. Estates or interests in property in general.
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- § 7. — In general.
- § 8. — Expectancies.
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- § 10. Money due or to become due.
- § 11. Future profits or earnings.
- § 12. — Under existing contract.
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- § 15. — Salary or fees of public officer.
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**(B) MODE AND SUFFICIENCY OF ASSIGNMENT.**

- § 31. Nature and essentials in general.
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**I. Requisites and Validity—Continued.****(B) MODE AND SUFFICIENCY OF ASSIGNMENT—Continued.**

- § 34. Oral assignments.
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- § 62. Capacity and assent of parties in general.
- § 63. Mistake.
- § 64. Fraud, duress, or undue influence.
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- § 68. Estoppel or waiver as to defects or objections.
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- § 80. — Ancillary rights of action.
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 Right of action for conversion after demand for return of property, see "Trove and Conversion," § 10.  
 Right of action to set aside fraudulent conveyance, see "Fraudulent Conveyances," § 211.  
 Right of redemption from foreclosure sale, see "Mortgages," § 593.  
 Right of trustee in bankruptcy to attack fraudulent transfer by bankrupt, see "Bankruptcy," § 268.  
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 Rights in public lands, see "Public Lands," § 135.  
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## I. REQUISITES AND VALIDITY.

### (A) PROPERTY, ESTATES, AND RIGHTS ASSIGNABLE.

#### § 1. Nature of right to assign.

#### § 2. What law governs.

(a) Where, on a bill of interpleader filed in a Maryland court, to settle the conflicting claims of two parties under a policy of insurance made payable in Philadelphia, growing out of an assignment of the policy made in New York, both parties appear, the case must be disposed of according to the law of Maryland.—*Whitridge v. Barry*, 42 Md. 140. [*Cited and annotated* in 63 L. R. A. 861, on conflict of laws as to insurance contracts.]

#### § 3. Statutory provisions.

(a) Act 1880, c. 273, prohibiting the payment of employes of certain corporations operating in Allegany county otherwise than in legal money of the United States, does not prevent such employes from assigning what is due them from such a corporation by orders drawn on it specifying that the amounts thereof be deducted from their wages.—*Shaffer v. Union Min. Co.*, 55 Md. 74. [*Cited and annotated* in 21 L. R. A. 797, on constitutionality of statutes restricting contracts and business; in 28 L. R. A. 274, on requiring wages to be paid in lawful money.]

(b) Act 1829, c. 51 (Code, art. 8, § 1), enabling an assignee to sue in his own name, does not alter the nature of an assignment, nor validate assignments which were void before said act was passed.—*Cox v. Sprigg*, 6 Md. 274. [*Cited and annotated* in 12 L. R. A. (N. S.) 547, on sufficiency of declaration to establish voluntary trust where settlor retains title.]

(c) Act 1834, c. 79, § 3, provided that no assignment or transfer of lands or chattels should avail against an attachment unless recorded. *Held*, that act 1847, c. 107, repealing said section, did not give validity to unrecorded assignments made before the passage of such repealing act.—*Neptune Ins. Co. v. Montell*, 8 Gill 228.

#### § 4. Existence and possession of subject-matter.

(a) An assignment of goods to be acquired

in the future is invalid, as it is essential to the validity of a transfer of property that it have an actual or potential existence.—*Hamilton v. Rogers*, 8 Md. 301. [*Cited and annotated* in 18 L. R. A. 298, on efficacy of mortgage on chattels to be manufactured or acquired as independent articles.]

#### § 5. Estates or interests in property in general.

#### § 6. Future and contingent estates or interests.

##### Cross-Reference.

Future judgment, see "Judgment," § 837.

#### § 7.— In general.

#### § 8.— Expectancies.

##### Cross-Reference.

Release of expectant share of heir to ancestor, see "Descent and Distribution," § 70.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 9.— Possibilities and contingencies.

(a) Where a testator devised real estate to trustees to pay the rents and profits to his two nieces for life, and, in case of one's death without issue before the other, to be held for the benefit of the survivor, the devisees had power to appoint or assign the rents and profits arising out of the contingent remainders of each depending on the previous death of the other, and a deed for such purpose, though not assignable at common law, would be enforced in equity as an agreement to assign or appoint.—*Cooke v. Husbands*, 11 Md. 492.

(b) A right of entry for condition broken cannot legally be assigned where the estate may continue after forfeiture incurred. *Aliter*, where breach of the condition puts an end to the estate.—*Gwynn v. Jones*, 2 G. & J. 173. (As to devise of such interests, see Code, art. 93, § 319.)

#### § 10. Money due or to become due.

##### Cross-Reference.

Pensions to become payable in future, see "Pensions," § 9.

(a) Under Code, art. 8, § 1, an open account is assignable so as to authorize the assignee to sue in his own name.—*Crawford v. Brooke*, 4 Gill 220.

## § 11. Future profits or earnings.

### Cross-References.

Assignment of portion of future earnings as equitable assignment, see post, § 48.  
Effect of partial invalidity of statutory provisions, see "Statutes," § 64.

### Annotation.

For Md. statutory provisions as to assignments of wages, see Code, art. 8, §§ 11, et seq.

Assignment of future earnings.—14 L. R. A. 126, note.

Constitutionality of statute restricting right to assign salary or wages.—28 L. R. A. (N. S.) 1108, note.

Validity of assignment of wages or salary to be earned.—5 L. R. A. (N. S.), 565, note.

## § 12.— Under existing contract.

## § 13.— Not founded on existing contract.

## § 14.— Fees or commissions of executor, administrator, guardian, or trustee.

## § 15.— Salary or fees of public officer.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 16. Executed contracts.

## § 17. Executory contracts.

### Cross-References.

Good will and contract for its protection, see ante, § 5.

## § 18.— In general.

## § 19.— Personal nature.

### Cross-References.

Assignment of fiduciary office or agency, see ante, § 5.

Transfer or devolution of estate of grantee in deed for future support as failure of consideration of deed, see "Deeds," § 19.

(a) A contract to display advertisements in a street car, the cards being subject to the approval of the advertising company, is one in which the other party relies upon the skill and experience of the company in making such displays, and hence is not assignable by the latter.—*Eastern Advertising Co. v. McGaw*, 89 Md. 72, 42 Atl. 923. [Cited and annotated in 23 L. R. A. (N. S.) 223, on assignability of executory contract to perform particular work.]

## § 20. Written instruments.

(a) The assignee of a chose in action for the payment of money by assignment in writing, assigned by the person authorized

to make the same, may maintain an action thereon against the debtor in the same manner as the assignor might have done before the assignment.—*Hewell v. Coulbourn*, 54 Md. 59.

(b) An obligation for the payment of money on a certain contingency is assignable, so that the assignee may sue in his own name.—*Dungan v. Mutual Ben. Life Ins. Co.*, 46 Md. 469. [Cited and annotated in 3 L. R. A. (N. S.) 951, on validity of assignment of interest in life insurance to one paying premiums.]

(c) All contracts for the payment of money, whether express or implied, are assignable under act 1829, c. 51 (Code, art. 8, § 1).—*New York Life Ins. Co. v. Flack*, 3 Md. 354.

(d) By act 1829, c. 51 (Code, art. 8, § 1), any assignee bona fide entitled to any judgment, bond, specialty, or other chose in action for the payment of money, by assignment in writing signed by the person authorized to make the same, may, by virtue of such assignment, sue and maintain an action, etc., in his name, etc., against, etc. *Held*, that an instrument of writing which bound the defendant to pay a money rent, let a third party have a portion of the produce of the demised premises, and furnish the means of carrying it away, was not such an instrument as, under that act, would authorize an assignee to maintain an action in his own name. The chose in action contemplated by the act is one purely for the payment of money, and where the assignor, if no assignment had been made, could only maintain an action for nonpayment of the money.—*Gordon v. Downey*, 1 Gill 41.

(e) Under act 1829, c. 51 (Code, art. 8, § 1), a bona fide transferee by assignment in writing of a chose in action for the payment of money may maintain an action at law, in his own name against the debtor.—*Kent v. Somervell*, 7 G. & J. 265.

## § 21. Rights of action.

### Cross-Reference.

Title vesting in trustee in bankruptcy, see "Bankruptcy," § 145.

## § 22.— In general.

(a) Choses in action, not negotiable, must

be assigned in writing to enable the assignee to sue in his own name.—*Traders' Nat. Bank v. Green*, 57 Md. 602. [*Cited and annotated* in 35 L. R. A. 647, on negotiability of note payable out of particular fund.]

(b) By act 1829, c. 51 (Code, art. 8, § 1), the rule that the assignee of a chose in action cannot maintain an action at law in his own name, is, under certain circumstances, abolished. Under that act a bona fide holder by assignment in writing of a chose in action for the payment of money may maintain an action at law against the debtor.—*Kent v. Somerwell*, 7 G. & J. 265.

### § 23.— On contract.

#### *Cross-References.*

See post, § 27.

Effect of bringing action in name of assignor on claim not assignable, see post, § 24.

Whether cause of action assigned arises on contract or tort, see post, § 24.

(a) Where one took out several life insurance policies from different companies by the terms of which each company became liable for a proportionate share of any loss sustained, a loss having occurred, and a judgment against one company for the amount having been paid, an action brought by the insured against one of the other companies for its proportion, and afterwards assigned for the benefit of the company which had paid the loss, may be sustained.—*Whiting v. Independent Mut. Ins. Co.*, 15 Md. 297. [*Cited and annotated* in 23 L. R. A. 121, on payment by volunteer or stranger.]

### § 24.— For tort.

#### *Cross-Reference.*

Power of administrator, see "Executors and Administrators," § 171.

#### *Annotation.*

Of cause of action for personal tort.—14 L. R. A. 512, note.

Of cause of action for personal injury.—44 L. R. A. 177, note.

Effect of statute declaring cause of action for death survivable, to render it assignable.—27 L. R. A. (N. S.) 404, note.

(a) A mortgagee's right of action against one to whom the mortgagor transferred the goods, and who sold the same, is assignable.—*Leighton v. Preston*, 9 Gill 201. (For second appeal see 6 Md. 88.)

### § 25.— On equitable grounds.

#### *Cross-References.*

Relief against judgment, see "Judgment," § 452.

Right of action to set aside fraudulent conveyance, see "Fraudulent Conveyances," § 211.

### § 26.— Founded on statute.

#### *Cross-Reference.*

Statutory preferences in payment of claims against estate assigned for benefit of creditors, see "Assignments for Benefit of Creditors," § 308.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 27.— Incident to transfer of right of property.

#### *Cross-Reference.*

Right of action on contract, see ante, § 23.

(a) Where one took out several life insurance policies from different companies by the terms of which each company became liable for a proportionate share of any loss sustained, a loss having occurred, and a judgment against one company for the amount having been paid, an action brought by the insured against one of the other companies for its proportion, and afterwards assigned for the benefit of the company which had paid the loss, may be sustained.—*Whiting v. Independent Mut. Ins. Co.*, 15 Md. 297. [*Cited and annotated* in 23 L. R. A. 121, on payment by volunteer or stranger.]

### § 28. Verdict or other recovery.

### § 29. Transfer of liability.

### § 30. Partial assignments.

#### *Cross-References.*

Assignment of portion of future earnings as equitable assignment, see post, § 48. Debtor's consent to partial assignment, see post, § 58.

Of judgments, see "Judgment," § 838.

(a) Where a city, through the register, consents to the assignment of a part only of a claim against it by a contractor, the assignment is valid.—*Harris v. City of Baltimore*, 73 Md. 22, 17 Atl. 1046, 8 L. R. A. 677.

(b) Where a person for whom a sum of money is levied by the commissioners of the county has assigned a portion of his claim to one party, and another portion to another party, and the assignees have taken the col-

lector's due bills therefor, the assignees cannot recover on the collector's bond.—*Shepard v. State*, 3 Gill 289.

## (B) MODE AND SUFFICIENCY OF ASSIGNMENT.

### *Cross-References.*

Assignments affecting mechanic's lien, see "Mechanics' Liens," § 114.

Interest in savings bank deposit, see "Banks and Banking," § 301.

Judgments, see "Judgment," § 839.

### § 31. Nature and essentials in general.

(a) An unconditional assignment for a valuable consideration, of all the notes left for collection in a bank, or the proceeds thereof, subject to the right of the bank to retain the amount of the assignor's debt to it, presents none of the peculiarities of a mortgage which would render it void for want of a stamp under acts 1844, c. 280, and acts 1845, c. 193.—*Union Bank v. Kerr*, 7 Md. 88.

(b) An assignment of a note for money which is not sold or intended for circulation, by reason of the fact that its value depends upon contingencies, is not such a bill, draft, or evidence of debt as would be void for want of a stamp by the same acts.—*Union Bank v. Kerr*, 7 Md. 88.

### § 32. Parties.

### § 33. Agreements to assign.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 34. Oral assignments.

#### *Cross-References.*

Validity as against subsequent attachment, see "Attachment," § 180.

Validity of oral assignment of interest in reversion of dower fund, see "Dower," § 118.

(a) A writing is not essential to support an equitable assignment of a chose in action.—*Smith v. Penn-American Plate Glass Co.*, 111 Md. 696, 77 Atl. 264.

(b) The owner of claims may, by parol, authorize another to assign such claims for him in writing.—*Spiker v. Nydegger*, 30 Md. 315.

(c) An equitable assignment of choses in action may be made by parol.—*Crane v. Gough*, 4 Md. 316.

(d) Under act 1829, c. 51 (Code, art. 8, § 1), providing that any assignee bona fide entitled to any chose in action for the payment of money by assignment in writing may maintain an action therefor in his own name, such assignee cannot maintain an action in his own name unless the assignment is in writing, signed by the party authorized to make the same.—*Chesley v. Taylor*, 3 Gill 251.

(e) A party for whom a sum has been levied in the county levies may make a valid transfer thereof without writing.—*Baden v. Clarke*, 1 Gill 165.

(f) An assignment of choses in action (other than of negotiable bills and notes) may be by parol.—*Onion v. Paul*, 1 H. & J. 114; *Mitchell v. Mitchell*, 1 Gill 66. [Cited and annotated in 27 L. R. A. (N. S.) 666, on manner of pledging or assigning book account.]

(g) A debt assigned by parol upon a sufficient consideration is good.—*Onion v. Paul*, 1 H. & J. 114. [Cited and annotated in 27 L. R. A. (N. S.) 666, on manner of pledging or assigning book account.]

### § 35. Assignments by delivery.

### § 36.— In general.

### § 37.— Written evidence of title or right.

### § 38.— Written evidence or statement of debt or claim.

### § 39.— Necessity and sufficiency of delivery.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 40. Assignments in writing.

#### *Cross-References.*

Necessity of pleading written assignment, see post, § 181.

Affixing revenue stamps, see "Contracts," § 38.

### § 41.— Form and contents.

(a) Defendant leased land to another for 99 years at a certain yearly rent per lot. An agreement was entered into at the same time, known as a "bonus building contract," reciting that the lease was on condition that the lessee construct certain kinds of houses on the 22 lots, for which he was to receive a bonus of \$12,000, and defendant agreed to

sell him at any time within 12 months the ground rents for the term of the lease, at a certain price. Later the lessee entered into a written agreement with plaintiff, who was to furnish all the stonework for the houses, that he should have, as additional security, all the money obtained for the ground rents over the prices named in the option agreement between lessee and defendant. *Held*, that plaintiff was not entitled to specific performance of the option contract as against defendant, since his agreement with the lessee did not amount to an assignment of the option.—*Andrew v. Meyerdirck*, 87 Md. 511, 40 Atl. 173. [*Cited and annotated* in 35 L. R. A. (N. S.) 1064, on stipulation in land contract against assignment by vendee without consent; in 43 L. R. A. (N. S.) 116, on assignability of option to purchase.]

(b) Act 1829, c. 51 (Code, art. 8, § 1), providing that an assignee, in order to sue in his own name, must be a bona fide holder by assignment in writing, signed by the person authorized to make the same, the assignment need not be on the instrument itself, but it is only required that it be such a writing, signed by the person authorized to make it, as is sufficient to transfer title.—*Stine v. Young*, 26 Md. 233.

#### § 42.—Indorsement of written instrument.

(a) Act 1829, c. 51 (Code, art. 8, § 1), does not direct that an assignment of a chose in action shall be in writing on the instrument assigned. It must be such a writing, signed by the person authorized to make it, as will be sufficient to transfer the bona fide title to the instrument.—*Kent v. Somervell*, 7 G. & J. 265.

(b) The blank indorsement and delivery of an obligation invest the holder with the right of collecting, or suing for, in the name of the assignor, the money due on such obligation, and of appropriating the same to his own use.—*McNulty v. Cooper*, 3 G. & J. 214.

(c) The blank indorsement and delivery of a chose in action are prima facie evidence of title in the assignee, and he may write a formal assignment over the assignor's signature.—*McNulty v. Cooper*, 3 G. & J. 214.

#### §§ 43, 44, 45.—Execution, acknowledgment, delivery.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 46.—Filing, recording, and registration.

##### *Cross-Reference.*

Recording as affecting rights of third persons, see post, § 98.

(a) It is not necessary that an assignee of claims or moneys shall give notice, by registration or otherwise, in order to shield his claim from an attaching creditor.—*Brady v. State*, 26 Md. 290.

(b) Act 1834, c. 79, § 3, which declares that no transfer of any "lands, tenements, hereditaments, goods, or chattels, or credits of any nonresident defendant shall have any effect against an attachment if not recorded," includes choses in action.—*Neptune Ins. Co. v. Montell*, 8 Gill 228. (See repealing act 1842, c. 107.)

(c) Under act 1834, c. 79, § 3, providing that, where any attachment is laid on the chattels of a nonresident, no transfer or assignment thereof shall have any effect against such attachment unless the same shall have been recorded in the office of the clerk of the county in which such attachment shall have issued, before the time of such issuing, an assignment by a nonresident bona fide in payment of a precedent debt to a resident, of goods in the hands of a warehouseman, who accepted the order of the assignor to deliver them to the assignee, is good without recording.—*Wells v. Biscoe*, 3 Gill 406. (See repealing act 1842, c. 107.)

#### § 47. Equitable assignments.

##### *Cross-References.*

Of judgments, see "Judgment," § 843.

Of liens, see "Liens," § 7.

Of mortgages, see "Mortgages," §§ 233, 235, 236.

Validity as against trustee in bankruptcy, see "Bankruptcy," § 188.

#### § 48.—In general.

(a) Any words or transactions which show intention on one side to assign and on the other to receive, if there is a valuable consideration, will operate as an effective equitable assignment.—*Kretzer v. Lorshbaugh*, 117 Md. 562, 83 Atl. 1027.

(b) To a bill for the sale of real estate for partition, J., one of the defendants, answered that, if he ever had any interest in the land, he was fully satisfied that it had been more than consumed and exhausted in his support, maintenance, and education, furnished by his brother G., another of the defendants; and that, therefore, he set up no claim to any right or interest in the land. *Held*, that this did not operate as an equitable assignment of his interest to G.—*Brown v. Thomas*, 46 Md. 636.

**§ 49.—Bill of exchange, check, or order.**

*Cross-Reference.*

Validity as against subsequent attachment, see "Attachment," § 180.

(a) A draft drawn, not payable out of any particular fund, does not, before acceptance, operate as an assignment of money due from the drawee to the drawer.—*Exchange Bank of Wheeling v. Sutton Bank*, 78 Md. 577, 28 Atl. 563, 23 L. R. A. 173.

(b) Checks drawn in the ordinary form, not describing any particular fund, or using any words of transfer of the whole or any part of the account standing to the credit of the drawer, but containing only the usual request, directed to the bank, to pay to the order of the payee a certain sum of money, are not, in the absence of acceptance, an assignment of the funds of the drawer.—*Moses v. Franklin Bank*, 34 Md. 574; *Exchange Bank of Wheeling v. Sutton Bank*, 78 Md. 577, 28 Atl. 563, 23 L. R. A. 173.

(c) A lessee, having mortgaged to the lessor his leasehold interest in the premises for certain promised advances, which by the terms of the mortgage were to be used in defraying the expenses of erecting certain houses on the leased land, subsequently gave to a third party an order on the lessor for \$6,000 in payment for bricks to be used in building the houses, which order the lessor accepted. *Held*, that the order and its acceptance constituted an assignment, by consent of the drawer and drawee, of so much of the fund upon which it was drawn, to be paid on the performance of the conditions set out in the mortgage relative to the mode and time of erecting the buildings.—*Rosenstock v. Ortwine*, 46 Md. 388.

(d) A check for a portion of the drawer's fund works no assignment until presented for payment and accepted by the bank.—*Moses v. Franklin Bank of Baltimore*, 34 Md. 574.

(e) Where an order is drawn either on a general or particular fund for a part only, it does not amount to an assignment of that part, or give a lien as against the drawee, unless he assent to the appropriation by an acceptance.—*Gibson v. Finley*, 4 Md. Ch. 75.

(f) A bill of exchange, although accepted, unless drawn on a particular fund does not operate to invest the payee with the character of an assignee of such fund.—*Wheeler v. Stone*, 4 Gill 38.

(g) An accepted bill, unless drawn on a particular fund, does not operate to invest the payee with the character of an assignee of the fund.—*Sheppard v. State*, 3 Gill 289.

**§ 50.—Order or draft on particular fund.**

(a) An instrument executed by a corporation which recited that it had empowered petitioner and a banker to sell patent rights in Europe, and had agreed to allow petitioner 10 per cent. commissions on the purchase price received from sales made by him, and which directed the banker to pay petitioner 10 per cent. of the purchase price received from sales, operated as an equitable assignment to petitioner of the 10 per cent., giving him a lien therefor on the funds produced by the sales, enforceable in equity.—*Leupold v. Weeks*, 96 Md. 280, 53 Atl. 937.

(b) An order made by the consignors of goods, directing the consignees, when in funds from sales, to pay certain parties \$10,000, if so much should be due the drawers, and not accepted by the consignees, does not constitute an assignment of the funds in the hands of the latter, as against an attachment in a suit against the consignors.—*Wilson v. Carson*, 12 Md. 54.

(c) An order drawn for the whole of a particular fund amounts to an equitable assignment of that fund, and, after notice to the drawee, it binds the fund in his hands.—*Gibson v. Finley*, 4 Md. Ch. 75; *Wilson v. Carson*, 12 Md. 54.

(d) An order, if drawn for a part of a

fund, does not amount to an equitable assignment, unless accepted by the drawee, expressly or by implication.—*Gibson v. Finley*, 4 Md. Ch. 75.

### § 51.—Power of attorney.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 52.—Agreement to appropriate or pay.

(a) A promise to pay a creditor out of the fruits of a pending action is not an assignment of the action to him.—*Gill v. Clagett*, 4 Md. Ch. 153.

### § 53. Consideration.

#### *Cross-References.*

Evidence of consideration, see post, § 136.

Lack of consideration for assignment as defense by debtor, see post, § 126.

Pleading consideration, see post, § 131.

### § 54.—Necessity.

#### *Cross-Reference.*

Assignment of judgment, see "Judgment," § 841.

### § 55.—Sufficiency.

(a) The advance to B. by A. of certain promissory notes to a large amount, which he had finally to pay, upon the faith of B.'s securing him by the assignment of policies of insurance and other property, constitutes a sufficient consideration to support B.'s assignment to A. of such policies.—*Whitridge v. Barry*, 42 Md. 140. [*Cited and annotated in 63 L. R. A. 861, on conflict of laws as to insurance contracts.*]

### § 56. Acceptance by assignee.

#### *Cross-Reference.*

Notice or acceptance, see post, § 57.

(a) While the acceptance of an assignment of the whole of a particular fund is not necessary, an order for a part of a fund is not an assignment of that part, nor does it give a lien thereon as against the drawee until he accepts the order, or an obligation to accept may be fairly implied.—*Smith v. Penn-American Plate Glass Co.*, 111 Md. 696, 77 Atl. 264.

### § 57. Notice to debtor.

#### *Cross-References.*

Defenses as affected by notice of assignment, see post, § 101.

Filing and notice, see ante, § 46.

Notice as affecting rights of third persons, see post, § 98.

Notice or consent, see post, § 58.

Payment as affected by notice, see post, § 93.

(a) In order to protect the title of one claiming as assignee by an order appropriating a fund, the assignee should give notice to the debtor of the assignment.—*Wilson v. Carson*, 12 Md. 54.

(b) An assignment does not bind the debtor until notice given to him.—*Robinson v. Marshall*, 11 Md. 251.

### § 58. Consent of debtor.

#### *Cross-Reference.*

Estoppel or waiver by consent, see post, § 68.

(a) To authorize the assignee to recover in an action of assumpsit upon an account it is not necessary that there should have been a promise by the defendant to pay the account, or that it was bona fide assigned to plaintiff.—*Crawford v. Brooke*, 4 Gill 213.

(b) The assignee of a chose in action may maintain a suit thereon in his own name if the debtor has, after notice of the assignment promised to pay the debt to him.—*Allstan v. Contee*, 4 H. & J. 351; *Barger v. Collins*, 7 H. & J. 213; *Gordon v. Downey*, 1 Gill 41.

### § 59. Revocation.

### § 60. Reassignment.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 61. (Omitted from the classification used herein.)

## (C) VALIDITY.

### § 62. Capacity and assent of parties in general.

### § 63. Mistake.

### § 64. Fraud, duress, or undue influence.

#### *Cross-Reference.*

Fraud as ground for rescission of assignment of judgment, see "Judgment," § 842.

### § 65. Legality of object.

(a) In a suit by an assignee of a claim for medical services, the assignment having been made, in consideration of love and affection, in trust for the benefit of the assignor's



children, the assignor, having been called as a witness for the plaintiff, under act 1829, c. 51 (Code, art. 8, § 1), may be asked, in cross-examination, what his motives were for making the assignment; and if it appear that his account was assigned because of its being barred by the statute of limitations, and for the purpose of making himself a witness to prove the rendition of the services, and the promise of the defendant, within three years, to pay the same, the assignment may be impeached, as not having been made in good faith.—*Crawford v. Brooke*, 4 Gill 213.

### § 66. Legality of consideration.

*Cross-Reference.*

See ante, §§ 53-55.

### § 67. Partial invalidity.

### § 68. Estoppel or waiver as to defects or objections.

*Cross-References.*

Effect of consent of debtor in general, see ante, § 58.

In assignment of judgment, see "Judgment," § 842.

### § 69. Ratification.

*Cross-Reference.*

Of assignment made on Sunday, see "Sunday," § 15.

### § 70. Right to contest validity.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## II. OPERATION AND EFFECT.

*Cross-References.*

As release, see "Release," § 6.

Assigned claims for wages constituting preferred claims in bankruptcy, see "Bankruptcy," § 348.

Assignment of contract guaranteed as discharge of guarantor, see "Guaranty," § 53.

Assignments of judgments, see "Judgment," § 844.

On right to maintain creditors' suit, see "Creditors' Suit," § 19.

Presentation of assigned claim against city, see "Municipal Corporations," § 1022.

### § 71. Effect of transfer in general.

*Cross-Reference.*

General rules of construction, see post, § 72.

(a) To a bill for the sale of real estate for partition, J., one of the defendants, answered that, if he ever had any interest in the land, he was fully satisfied that it had been more than consumed and exhausted in his support, maintenance, and education, furnished by his brother G., another of the defendants; and that, therefore, he set up no claim to any right or interest in the land. *Held*, that this did not operate as an equitable assignment of his interest to G.—*Brown v. Thomas*, 46 Md. 636.

(b) An agreement by A. to assign to B. part of a judgment recovered by C. against D. is not performed by sending to B. a copy of the judgment, with an assignment by C. to A.—*Harris v. Earle*, 4 H. & J. 274.

### § 72. General rules of construction.

*Cross-Reference.*

Effect of transfer, see ante, § 71.

(a) F. assigned to P. one-half the profits of a contract made by F. with the commissioners of lotteries of Maryland. This contract provided that the commissioners should deliver to F. certain licenses "for the sale of lottery tickets in the city of Baltimore," and certain other licenses "for the sale of said tickets in the State of Maryland, out of the city of Baltimore." There was nothing in the contract on the part of the commissioners enlarging the area of sale. F. covenanted to pay the commissioners 5 per cent. "on the amount of tickets at scheme prices sold by him or his agents in the Maryland consolidated lotteries," and undertook that the sum so paid should amount to \$25,000 a year, and that a correct account of such sales should be furnished, sustained by such proof as F. required from his "distant agents." Upon a bill for an account by P., it was *held* that the contract did not relate to sales made in other states, as the covenants of F. must be construed with regard to those of the commissioners, and by presumption of law would relate to the same subject-matter.—*Paine v. France*, 25 Md. 163.

### § 73. Property or interest transferred.

(a) The assignment by the mortgagor of his equity of redemption carries with it the rights of the assignor in and to other real estate which he had conveyed absolutely to the mortgagee, but which conveyance was to

be treated as a mortgage.—*Banks v. McClellan*, 24 Md. 62, 87 Am. Dec. 594.

(b) An assignment by a party as "executor and devisee," independently of any other fact, conveys nothing beyond his interest as devisee, or what the law authorizes him to dispose of in his capacity of executor.—*Miller v. Williamson*, 5 Md. 219.

#### § 74. Title conveyed.

#### § 75. Rights passing as incidents.

##### *Cross-References.*

Rights of action passing to purchasers of property from trustee in bankruptcy, see "Bankruptcy," § 268.

Right to maintain replevin, see "Replevin," § 8.

#### § 76.— In general.

#### § 77.— Collateral agreements.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 78.— Collateral securities, liens, and preferences.

##### *Cross-Reference.*

Statutory preferences in payment of claims against estate assigned for benefit of creditors, see "Assignments for Benefit of Creditors," § 308.

(a) An assignment without recourse does not entitle the assignee to the assignor's lien to secure the purchase price.—*Schnebly v. Ragan*, 7 G. & J. 125, 28 Am. Dec. 195.

(b) The assignment of a debt operates as an assignment of all collateral or liens securing its payment.—*Iglehart v. Armiger*, 1 Bland 519.

(c) An equitable lien will not pass on the assignment of the obligation which it secures.—*Iglehart v. Armiger*, 1 Bland 519.

#### § 79.— Transfer of debt on assignment of security.

(a) An assignment of the securities for a debt does not necessarily carry with it the debt itself.—*Iglehart v. Armiger*, 1 Bland 519.

#### § 80.— Ancillary rights of action.

#### § 81. Exceptions and reservations.

#### § 82. Conditions and restrictions.

#### § 83. Priorities.

##### *Cross-References.*

Effect of assignment of funds before general assignment for benefit of creditors,

see "Assignments for Benefit of Creditors," § 338.

Priority of landlord's lien over assignment, see "Landlord and Tenant," § 248.

#### § 84.— In general.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 85.— As between assignees.

##### *Annotation.*

Priority rights of different assignees of fund in hands of third person.—66 L. R. A. 761, note.

(a) The assignee of a claim or chose in action who first gives notice to the debtor obtains priority over other assignees.—*Lambert v. Morgan*, 110 Md. 1, 72 Atl. 407.

(b) A pending suit for the recovery of a sum of money was, in October, 1835, assigned by the plaintiffs for a valuable consideration, and the assignee had the case entered for his own use upon the docket of the Court of Appeals, where it was then pending on appeal, and in 1836 had the same case marked for his use on the docket of the court of original jurisdiction. The cause was subsequently remanded for amendment and further proof, and an amended bill was filed in 1838, when the entry for the use was not marked upon the docket, and has not been since. *Held*, that the assignee was entitled to the proceeds of the suit in preference to a party who received an assignment of the same in 1841 or 1845 to secure a pre-existing indebtedness.—*Gill v. Claggett*, 4 Md. Ch. 153.

(c) The obligee of a contract to convey land assigned it to T., who, by deed, conveyed all his interest in the land to defendant. T. subsequently, with fraudulent intent, returned the contract to the obligee, who altered the assignment, changing the dates, and making it read as an assignment to plaintiff, and delivered the contract and assignment to plaintiff. *Held*, that plaintiff was not entitled to a specific performance of the contract, as he could acquire no better title than that possessed by his assignor when the assignment was made.—*Clary v. Grimes*, 12 G. & J. 81.

#### § 86.— As between assignees and creditors.

(a) Act 1868, c. 471, § 211 (see Code, art.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

23, § 92), provides that "suits against a foreign corporation exercising franchises in this state may be brought by a resident of the state for any cause of action, and by a plaintiff not a resident of this state, when the cause of action has arisen or the subject of the action shall be situated within the state." *M.*, residing in Baltimore, sued out an attachment in a court of Maryland against *B.*, of Chicago, and garnished an insurance company incorporated in Great Britain, and doing business both in Baltimore and Chicago, in order to reach funds due *B.* for a loss by fire of *B.*'s store in Chicago. *E.*, a citizen of Chicago, intervened by petition claiming the fund by assignment from *B.* *Held*, that the plaintiff in attachment, as against the garnishee, was subrogated to the rights of the debtor, and could recover only by the same right, and to the same extent, as the debtor might recover if he were suing the garnishee.—*Myer v. Liverpool, London & Globe Ins. Co.*, 40 Md. 595.

(b) Where a plaintiff assigned a claim, and the defendant afterwards sued out an attachment, and laid the same thereon, it was *held* that he obtained no lien thereby to defeat the assignee.—*Baldwin v. Wright*, 3 Gill 241.

§ 87.—Bona fide assignees.

§ 88. Assignments as security.

§ 89. Assignments for collection.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### III. RIGHTS AND LIABILITIES OF PARTIES.

#### Cross-References.

Assignee of insurance policy, see "Insurance," §§ 219-222.

Assignee of right of redemption, see "Mortgages," § 594.

Effect of discharge in bankruptcy on assignment of wages, see "Bankruptcy," § 433.

Purchasers pendente lite, see "Lis Pendens."

Right of action for deceit, see "Fraud," § 29.

Right of assignee of seamen's wages to lien, see "Seamen," § 27.

Right of assignees of claim against corporation to enforce liability of stockholders, see "Corporations," § 240.

Right of assignee of creditor to attack fraudulent transfer by debtor, see "Fraudulent Conveyances," § 211.

Right of assignee to copyright, see "Copyrights," § 23.

Right of assignee to perfect lien, see "Liens," § 9.

Right of assignee to sue on replevin bond, see "Replevin," § 132.

Rights of assignee of unauthorized contract with county, see "Counties," § 124.

Rights of assignee of usurious borrower or other debtor, see "Usury," § 129.

Rights of assignee of usurious contract, see "Usury," § 128.

Set-off or counterclaim against assigned claim, see "Set-Off and Counterclaim," §§ 49, 50.

### § 90. Nature and extent of rights of assignee in general.

(a) When it has been proven to the satisfaction of a court that there has been an assignment of funds in court, by claimants under its jurisdiction, such court has ample power to carry out the assignment by proper order.—*Crise v. Lanahan*, 68 Md. XII, unreported, 11 Atl. 842.

(b) Where the assignment of assets and choses in action shows upon its face that it was made for a special and particular purpose, it confers no right upon the assignee to use the assigned property in any other manner.—*Owens v. Miller*, 29 Md. 144.

(c) After assignment and notice to the debtor, payment by him to the assignor is not a good discharge of the debt.—*Shriner v. Lamborn*, 12 Md. 170.

(d) Payments by the debtor to the assignor without notice of the assignment are good.—*Robinson v. Marshall*, 11 Md. 251.

### § 91. Control over property or right assigned.

(a) Where the plaintiff in an action assigns the debt sued on as collateral security for a contingent liability, and dies, until such contingent liability is discharged, the right to the judgment remains in the assignee, with the right to enforce its payment by execution or otherwise, or to assign it to any one for value.—*McAleer v. Young*, 40 Md. 439.

(b) Where an insured assigned the policy to a creditor, who was to receive the proceeds to apply them to satisfy his claim, and pay the residue to the insured's wife, the company is authorized to pay the money to the assignee without the interposition of the

administrator of the insured, and the wife's claim to the residue was good as against such administrator.—*Harrison v. McConkey*, 1 Md. Ch. 34. [*Cited and annotated in 49 L. R. A. 738, 741, on power of insured to destroy beneficiary's rights.*]

## § 92. Compromise or release of claim assigned.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 93. Payment of debt assigned.

### Cross-References.

Recovery of payment from assignor, see post, §§ 95-97.

Application of payment, see "Payment," § 47.

(a) The assignee of a chose in action cannot recover against a debtor who has paid the assignor after the assignment, except upon proof that the payment was made after due notice of the assignment, and this whether the claim is within act 1829, c. 51 (Code, art. 8, § 1), or not.—*Robinson v. Marshall*, 11 Md. 251.

## § 94. Rights of assignee as against debtor.

### Cross-Reference.

Rights and liabilities of subsequent or remote assignees, see post, § 115.

(a) Where a lessee covenanted not to assign an option contract to buy the ground rents for the term without the written consent of the lessor, an assignment by him of such option contract without the lessor's consent does not give the assignee a right to enforce it against the lessor.—*Andrew v. Meyerdirck*, 87 Md. 511, 40 Atl. 173. [*Cited and annotated in 35 L. R. A. (N. S.) 1064, on stipulation in land contract against assignment by vendee without consent; in 43 L. R. A. (N. S.) 116, on assignability of option to purchase.*]

(b) Claims placed in the hands of a constable for collection, and receipted for by him as such, and which he collected, may be recovered from him by the assignee of such claims in an action in his own name for money had and received.—*Spiker v. Nydegger*, 30 Md. 315.

(c) Property which was subject to a mortgage was sold free from the mortgage, and

certain certificates of stock, part of the purchase money, were deposited with a third person to await the determination of the amount due upon the mortgage, the mortgagor insisting that the mortgage was in part usurious, and should be reduced in amount. Afterwards the vendor assigned his interest in the certificates, the assignee agreeing to pay the amount actually due on the mortgage so as to release the stock. *Held*, that the assignee might maintain a bill in equity against the mortgagee, in order that the question of usury and the true amount of the mortgage debt might be determined.—*Banks v. McClellan*, 24 Md. 62, 87 Am. Dec. 594.

(d) Where property is mortgaged to secure a debt affected with usury, the assignee of the equity of redemption is entitled to aid from a court of equity to redeem the property by paying the mortgage debt and simple interest thereon, or he may bring the same into court to be paid, if a proffer to that effect is contained in the bill.—*Banks v. McClellan*, 24 Md. 62, 87 Am. Dec. 594.

## § 95. Rights of assignee as against assignor.

## § 96.— Right of recourse in general.

### Cross-Reference.

Rights and liabilities of subsequent or remote assignees, see post, § 115.

(a) In a suit against the assignor, the assignee having failed to recover from the obligor, the plaintiff should state the reason why the amount was not recovered from the obligor.—*Hewell v. Coulbourn*, 54 Md. 59.

(b) The bonds of G., payable in 1823, 1824, and 1825, were assigned by A., the obligee, to H., who assigned them on the 2d of May, 1820, to L. in following terms: "For value received, I assign to L., his heirs and assigns, the within bond, and hold myself answerable for the ultimate payment." These bonds were afterwards assigned by L. to R. *Held*, that in the event of L.'s diligent prosecution against those who stood before H. in the order of liability on these bonds, or by showing the inutility of such a prosecution, he became entitled to a right of action against H. on his contract of indemnity, and that suit might be brought against him

for the use of R., the equitable assignee of L.—*Lewis v. Hoblitzell*, 6 G. & J. 259.

(c) To enable the assignee of a bond to maintain an action against the assignor, he must prove that the obligor was unable to pay the debt, or that he could not be found in the place or county of his usual abode, or that he was unable to recover his debt from the obligor, although he used due diligence for that purpose.—*Boyer v. Turner*, 3 H. & J. 285.

#### § 97.—Express or implied warranty by assignor.

(a) The assignee of book accounts assigned to him in payment of a debt, and which are represented to be good, may maintain an action against the assignor for such of the accounts as could not be recovered by demanding them from the parties from whom they were stated to be due, although the receipt given by the assignee for the accounts was in full payment of the debt.—*Trisler v. Williamson*, 4 H. & McH. 219, 1 Am. Dec. 396.

#### § 98. Rights of assignee as against third persona.

##### *Cross-Reference.*

Garnishment of assignee by creditors of assignor in general, see "Garnishment," § 51.

(a) In garnishment of the proceeds of the sale of a vessel, it appeared that, at the time the vessel was sold and delivered to the garnishee, there was an agreement between defendant and garnishee that the latter should, in consideration of the price agreed on, pay certain debts due by defendant, which were designated by him, amounting in the aggregate to the whole purchase money, and that this agreement was performed by the garnishee. *Held*, that it was immaterial that the bill of sale was, under the Act of Congress, ineffectual to pass the legal title as against the garnishee, as the agreement would be binding on defendant, and protect the fund from attachment by his creditors.—*Troxall v. Applegarth*, 24 Md. 163.

(b) Where property was conveyed to trustees to pay creditors, and the grantor afterwards applied for relief under the insolvency laws, rents and profits accruing be-

fore the insolvency proceedings, but not included in the schedule of assets, are subject to trustee process.—*Hupe v. Seibert*, 4 Gill 240.

#### § 99. Equities and defenses between original parties.

#### § 100.—In general.

(a) Act 1876, c. 262, makes bills of lading negotiable, so as to pass title to the property named in them, to the same extent as promissory notes, and expressly provides that the title shall inure to and vest in the bona fide holder for value, unaffected by the rights and equities of all other parties of which he had no "actual notice" at purchase. Goods, at the request of the purchaser, were consigned to a third person to whom they had been sold. After shipment, the purchaser, who was the consignor, assigned the bills of lading to the assignees of the seller to secure the purchase price, and the assignees communicated with the consignee by telegraph concerning the goods. *Held*, that the assignees of the seller had the "actual notice," contemplated by the statute, of the interest of the consignee, at the time of the assignment.—*Jacob Dold Packing Co. v. G. Ober & Sons Co.*, 71 Md. 155, 18 Atl. 34. (For present statutory provisions as to bills of lading, see Code, art. 14.)

(b) An assignee of a chose in action takes the same subject to all defenses against it in the hands of the assignor at the time of the assignment.—*Watkins v. Worthington*, 2 Bland 509; *Mullikin v. Mullikin*, 1 Bland 538; *Ohio Life Ins. & Trust Co. v. Ross*, 2 Md. Ch. 25; *Timms v. Shannon*, 19 Md. 296, 81 Am. Dec. 632; *Butler v. Rahm*, 46 Md. 541; *Hampson v. Owens*, 55 Md. 583; *Diefenbach v. Vogeler*, 61 Md. 370.

(c) The assignee of security taken in the wife's name on a sale of the husband's land takes no better title thereto than the wife had.—*Green v. Early*, 39 Md. 223.

(d) Act 1829, c. 51 (Code, art. 8, § 1), merely enables an assignee to sue in his own name, and all defenses against the assignor existing before notice of the assignment to the debtor are valid against the assignee.—

**Hardesty v. Jones**, 10 G. & J. 404, 32 Am. Dec. 180.

(e) In an action by the assignee of a single bill as authorized by act 1829, c. 51 (Code, art. 8, § 1), all and the same defenses, legal or equitable, are open to the debtor, as if the action was brought in the name of the assignor.—**Hardesty v. Jones**, 10 G. & J. 420.

(f) The assignee of an obligation which is not negotiable can acquire no greater rights than his assignor had, and any legal defense which can be set up against the latter is available against the former.—**Estep v. Watkins**, 1 Bland 486.

**§ 101.—As effected by notice of assignment.**

*Cross-Reference.*

Priority of attachment against assignor, see "Attachment," § 180.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 102.—Bona fide assignees.**

(a) Where there is a collateral fact which is known to an assignee of a chose in action, and which is sufficient to put him on inquiry, knowledge of such collateral fact will be held equivalent to knowledge of the ultimate fact, where inquiry would disclose the same.—**National Bank of Bristol v. Baltimore & O. R. Co.**, 99 Md. 661, 59 Atl. 184, 105 Am. St. Rep. 321.

(b) A bona fide assignee without notice will not be affected with notice to his assignor, but will be as much protected as if no notice had ever existed.—**Ohio Life Ins. Co. v. Ross**, 2 Md. Ch. 25.

**§ 103.—Estoppel or waiver.**

(a) The defendant exhibited and delivered to the complainant, who was assignee of certain property, subject to an agreement of sale between the assignor and the defendant, a statement of the payments he had made the assignor on account thereof. Afterwards, discovering receipts for further payments, not mentioned in the statement, he claimed a credit therefor. *Held*, that the assignment to the complainant being made prior to the receipt by him of the statement from the defendant, and he not being in-

duced to make the purchase by such statement, or lulled into false security by it, there could be no sufficient ground for denying the defendant the benefit of the receipts.—**Hall v. Purnell**, 2 Md. Ch. 137.

(b) If an innocent party is induced by the obligor to become the purchaser of a bond, against which there are equities, it is a deceit upon him, and he ought not to be subject to the same equity to which the obligor was entitled against the obligee.—**Hall v. Purnell**, 2 Md. Ch. 137.

(c) If the debtor, when applied to for information, misleads the assignee as to the amount due, or conceals his equitable defense, or permits the assignee in good faith to take the assignment for the full nominal value of the debt, he cannot afterwards set up his defense against the assignee.—**Jones v. Hardesty**, 10 G. & J. 404, 32 Am. Dec. 180.

(d) Though it is a general rule that an assignee is liable to all equities which exist against his assignor, yet there are circumstances which may place the assignee in a better situation than the assignor. The conduct of the obligor may be such as to deprive him of an equity which he had against the assignor. Where an assignee is induced to believe by the obligor that the obligation to be assigned will be paid, it would be a deceit upon the assignee to suffer the obligor afterwards to set up, as a defense, a concealed equity existing between him and the assignor.—**Kemp v. McPherson**, 7 H. & J. 320.

**§ 104. Equities in favor of third persons.**

*Cross-Reference.*

Effect of previous assignment of part of claim to attorney for services, see "Attorney and Client," § 148.

(a) The assignee of a wife's chose in action from a husband who has not reduced it into possession takes it subject to the equity of a due provision thereout for the wife, which may be made by a court of equity, should the subject-matter ever come within the jurisdiction of such a court, and this notwithstanding the wife joins in the assignment. The assignee is supposed to be

acquainted with such attaching equity.—*Norris v. Lantz*, 18 Md. 260.

(b) The assignee of a chose in action takes it subject to all the equities to which it was subject in the hands of the assignor, but the equities are such as obtain in favor of the debtor, and not those claimed by a third person.—*Ohio Life Insurance & Trust Co. v. Ross*, 2 Md. Ch. 25.

#### § 105. Liabilities of assignee.

##### § 106.—To assignor.

(a) The courts will not lend their aid to an assignor, in a case where the gift or assignment has been consummated by possession, to recover back what the assignee has received or collected.—*McNulty v. Cooper*, 3 G. & J. 214.

##### § 107.—To debtor.

(a) A defendant delivered to the assignee certain property, subject to an agreement of sale between the assignor and himself, a statement he had made for the assignor on account thereof. Afterwards, discovering receipts for other payments not mentioned in the statement, he claimed credit therefor. *Held*, that the assignment to the assignee being made prior to the receipt by him of the statement from the defendant, and he not being induced to make the purchase by such statement, nor lulled into false security by it, there could be no sufficient ground for denying the defendant the benefit of the receipts.—*Hall v. Purnell*, 2 Md. Ch. 137.

##### § 108.—For incumbrances and charges.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in *Decennial and Key Number Digests*, and references therein to *Century Digest*.

##### § 109.—On contract assigned.

(a) Where the assignor of a note is a party to the suit, brought by the assignee against the obligor, he is bound by the decision, in a suit by the assignee against him to recover the amount, where recovery could not be had from the obligor.—*Hewell v. Coulbourn*, 54 Md. 59.

(b) An assignee who has notice that his assignor bore a particular relation to the party from whom the title to the subject-matter assigned was acquired, is required to defend the assignment as if he himself

stood in such relation, when the title is impeached by reason of such relation.—*Green v. Early*, 39 Md. 223.

(c) S. assigned his entire stock of goods to E., but retained possession of it, went on with his business as usual, and made purchases from J., which, when received into his store, were placed among the merchandise assigned to E. After some time S. failed, and E. took possession of all the goods in his store (among which were some of the articles received from J.), sold them, and applied the proceeds to the payment of a debt due him by S., and of indorsements made by him for S. In an action by J. against E. for the goods sold and delivered to S., *held*, that there was no evidence from which a jury might infer a partnership, an agency, or fraud between E. and S., so as to make E. liable.—*Smith v. Edwards*, 2 H. & G. 411.

##### § 110. Rights of assignor as against debtor.

*Cross-Reference.*

Right of action, see post, § 117.

(a) Where, in an action on an insurance policy, the record states that one of the plaintiffs had assigned his claim in the suit prior to the trial, but it does not appear that he no longer had a right to prosecute the suit, an exception to plaintiff's prayers, on the ground that only one plaintiff has an existing demand, is untenable.—*Globe Reserve Mut. Life Ins. Co. v. Duffy*, 76 Md. 293, 25 Atl. 227.

##### § 111. Rights of assignor as against third persons.

*Cross-Reference.*

Right of action, see post, § 117.

##### § 112. Liabilities of assignor to third persons.

##### § 113.—In general.

##### § 114.—On contract assigned.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in *Decennial and Key Number Digests*, and references therein to *Century Digest*.

##### § 115. Rights and liabilities of subsequent or remote assignees.

*Cross-References.*

Rights and liabilities of assignee as against debtor, see ante, § 94.

Rights of assignee as against assignor, see ante, § 95.

(a) Claims placed in the hands of a constable for collection, and receipted for by him as such, and which he collected, may be recovered from him by the assignee of said claims in an action for money had and received.—*Spiker v. Nydegger*, 30 Md. 315.

(b) The bonds of G., payable in 1823, 1824, and 1825, were assigned by A., the obligee, to H., who assigned them on the 2d of May, 1820, to L. in following terms: "For value received, I assign to L., his heirs and assigns, the within bond, and hold myself answerable for the ultimate payment." These bonds were afterwards assigned by L. to R. *Held*, that in the event of L.'s diligent prosecution against those who stood before H. in the order of liability on these bonds, or by showing the inutility of such a prosecution, he became entitled to a right of action against H. on his contract of indemnity, and that suit might be brought against him for the use of R., the equitable assignee of L.—*Lewis v. Hoblitzell*, 6 G. & J. 259.

#### IV. ACTIONS.

##### *Cross-References.*

In justices' courts, see "Justices of the Peace," § 39.

Joinder of causes of action, see "Action," § 50.

Jurisdiction of municipal court to set aside assignment for fraud, see "Courts," § 188.

Remedy of assignee of claim for breach of covenant, see "Covenants," § 104.

Splitting cause of action by assignment of part thereof, see "Action," § 53.

##### § 116. Between assignor and assignee.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

##### § 117. By assignor.

##### *Cross-Reference.*

Rights of assignor as against debtor in general, see ante, § 110.

(a) Where, in an action on an insurance policy, the record states that one of the plaintiffs had assigned his claim in the suit prior to the trial, but it does not appear that he no longer had a right to prosecute the suit, an exception to plaintiffs' prayers, on the ground that only one plaintiff had an existing demand, is untenable.—*Globe Reserve Mut. Life Ins. Co. v. Duffy*, 76 Md. 293, 25 Atl. 227.

##### § 118. By assignee.

##### *Cross-References.*

Assignor and assignee, see ante, § 117.

Assignee of foreign administrator, see "Executors and Administrators," § 519.

Assignee of insurance policy, see "Insurance," § 624.

Following state laws and practice as to right of assignee to sue in his own name in federal courts, see "Courts," § 384.

Testimony as to transactions with persons since deceased, see "Witnesses," § 183.

##### § 119.—In general.

##### *Cross-Reference.*

Time to sue, see post, § 128.

(a) An assignee of a reversion may sue for the rents falling due under the lease after the assignment; and, where all the rents due under the lease are assigned, he may sue for the rents which fell due previous to the assignment, under act 1829, c 51 (Code, art. 8, § 1), providing that any assignee of a chose in action for the payment of money may maintain an action in the same manner as the assignor might have done.—*Outtoun v. Dulin*, 72 Md. 536, 20 Atl. 134.

(b) The assignee of a mortgage cannot maintain a suit in his own name upon the agreement of an assignee of the mortgagor, made with the latter, to pay the debt, without an assignment of the agreement or covenant to himself. The right given by Code, art. 8, § 1, to assignees of certain choses in action to sue in their own names, does not include such a case, even if the right under the agreement passed with the assignment of the mortgage as an incident to it.—*Gable v. Scarlett*, 56 Md. 169.

(c) Under Code, art. 8, the assignee of any bond or chose in action for the payment of money or any legacy may maintain an action in his own name against the debtor in the same manner as the assignor might have done before assignment.—*Crisfield v. State*, 55 Md. 192. [*Cited and annotated in 68 L. R. A. 514, 518, 524, 525, 529, 534, 542, 551, on extinction of judgments against principals by sureties' payment.*]

(d) The statute authorizing an assignee to sue in his own name is to be liberally expounded to carry out its purposes.—*Lucas v. Byrne*, 35 Md. 485.



(e) A party who has obtained the assignment of a suit or decree has done everything which can reasonably be required of him when he has caused the entry to his use to be made; he does not lose his right by omitting to cause such entry to be made on every docket on which the suit is entered.—Gill v. Clagett, 4 Md. Ch. 153.

(f) The right to sue in his own name is given by act 1829, c. 51 (Code, art. 8, § 1), to any equitable assignee of a chose in action, whether his assignor be dead or alive, and, if dead, whether there be an executor or administrator or not.—Kent v. Somervell, 7 G. & J. 265.

(g) The assignee of an assignee of a chose in action for the payment of money may sue in his own name at law, under act 1829, c. 51 (Code, art. 8, § 1), as the language of that act includes any assignment, immediate or remote.—Kent v. Somervell, 7 G. & J. 271.

#### § 120.—In name of assignor.

##### *Cross-References.*

Right of attorney to bring suit in his own name on claims assigned to him without joining assignors, see post, § 121.

Right of assignee suing in name of assignor to make affidavit of claim, see "Pleading," § 75.

(a) In an action of assumpsit for goods converted, although the debt has been assigned, the action must be brought in the name of the assignor.—Leighton v. Preston, 9 Gill 201.

#### § 121.—In name of assignee.

##### *Cross-References.*

In admiralty, see "Admiralty," § 41.

In justices' courts, see "Justices of the Peace," § 39.

(a) Under Code, art. 8, § 1, which authorizes the assignee of a chose in action to sue in his own name, he may sue either in his own name or in the name of his assignor for his use.—Canfield v. McIlwaine, 32 Md. 94.

(b) That mortgaged goods have been wrongfully sold by the mortgagor does not prevent the bringing of a suit for money had and received in the name of the mortgagee for the use of his assignee instead of in the name of the assignee.—Leighton v. Preston, 9 Gill 201.

#### § 122.—Conditions precedent.

#### § 123.—Control of proceedings.

#### § 124.—Against assignor.

#### § 125.—Against assignee.

#### § 126.—Defenses.

##### *Cross-Reference.*

Discharge in bankruptcy, see "Bankruptcy," § 433.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 127.—Jurisdiction and venue.

##### *Cross-References.*

Effect of assignment on venue, see "Venue," § 27.

Jurisdiction of federal courts as affected by citizenship of assignee, see "Courts," § 312; "Removal of Causes," §§ 33-35.

Jurisdiction of federal courts as dependent on amount or value in controversy, see "Courts," § 328.

(a) The assignee of a chose in action must pursue his remedies in the same tribunals in which the assignor, had no assignment been made, was bound to seek them; and it is only when obstacles growing out of the assignment are so interposed as to hinder, or render extremely difficult, the successful prosecution of his remedies at law, that a court of equity will extend to him that equitable protection which his exigencies demand.—Adair v. Winchester, 7 G. & J. 114.

(b) Equity does not lend its aid to enforce the rights of the assignee of a chose in action, unless its interposition becomes necessary by reason of the inability of a court of common law to do him adequate justice.—Adair v. Winchester, 7 G. & J. 114.

(c) An assignee of a chose in action must pursue his remedy in the same tribunal in which the assignor was bound to seek his remedy before the assignment.—Adair v. Winchester, 7 G. & J. 114.

(d) Where A., in consideration of a debt due from him to B., assigns to him the bond of C., and C. is or becomes insolvent, chancery has no jurisdiction of a bill by B. against A. to compel payment of the bond so assigned, as, if the assignment was an extinguishment of the original debt, complainant was not entitled to relief, either in law or equity, and, if not such extinguishment, the complainant had his remedy at

law on the original contract.—*Gover v. Christie*, 2 H. & J. 67.

### § 128. Time to sue, and limitations.

#### *Cross-References.*

Rights of action by assignee, see ante, §§ 119-122.

### § 129. Parties.

#### *Cross-References.*

Bringing in assignee pendente lite as party, see "Parties," § 51.

Intervention by person to whom claim is assigned pending suit, see "Parties," § 40.

Substitution of assignee pendente lite as party plaintiff, see "Parties," § 59.

(a) An action upon a bond cannot be maintained by the obligee, who has assigned away his rights therein, unless the assignee is made a party.—*Coale v. Mildred*, 3 H. & J. 278.

### § 130. Pleading.

#### § 131.—In general.

(a) The assignee of an account for medical services and a sale of medicine, in declaring under an assignment thereof, need not aver a promise by the defendant to pay the account, or that he was bona fide entitled to it, or that it was bona fide assigned to him.—*Crawford v. Brooke*, 4 Gill 218.

(b) In declaring, under an assignment of a claim for medical services, under act 1829, c. 51 (Code, art. 8, § 1), the plaintiff need neither aver a promise by the defendant to pay him the account, nor that he was bona fide entitled to the account, nor that it was bona fide assigned to him.—*Crawford v. Brooke*, 4 Gill 218.

#### § 132.—Issues, proof, and variance.

(a) In an action on a duebill, brought in the name of the assignee against the maker, an allegation that the payee of the duebill indorsed, assigned, transferred, and delivered it to the plaintiff at a particular date, and that, at a subsequent specified date, the plaintiff gave due notice thereof to the defendant, need not be proved as laid; it is only necessary to prove that the assignment was made before suit brought.—*Canfield v. McIlwaine*, 32 Md. 94.

(b) In an action upon an administration bond, for the use of A., who claims as the

assignee of the obligee of the intestate, it is necessary to prove the assignment of the bond to the equitable plaintiff.—*Burgess v. State*, 12 G. & J. 64.

(c) Where an action is brought in the name of the assignee of the obligee in the bill, proof of the assignment is not necessary when the defendant has treated with and recognized the assignee as the holder, and the jury may infer from such conduct that the assignment is in the handwriting of the obligee.—*Lamar v. Manro*, 10 G. & J. 50.

(d) A defendant may, by motion, require the person for whose benefit a suit is brought to produce the assignment under which he claims.—*Harris v. Jaffray*, 3 H. & J. 543.

### § 133. Evidence.

#### *Cross-References.*

Best and secondary evidence, see "Evidence," §§ 158, 183, 184.

Competency of assignor to testify for assignee as to transaction with person since deceased or incompetent, see "Witnesses," § 148.

Competency of assignor to testify against assignee as to transaction with person since deceased or incompetent, see "Witnesses," § 150.

Declarations of assignor as evidence against assignee, see "Evidence," §§ 234, 235.

Parol or extrinsic evidence of fraud, see "Evidence," § 434.

Parol or extrinsic evidence to contradict or vary written assignment, see "Evidence," §§ 392, 419, 427.

#### § 134.—Presumptions and burden of proof.

(a) By act 1788, c. 40, § 2, all persons claiming a right to certain lands by any grant or agreement with the proprietors of Pennsylvania were entitled to a patent from the State of Maryland. One C. was entitled to an equitable right in these lands. A. obtained a judgment against him, and these lands were sold on execution, A. becoming the purchaser, who obtained a patent in his own name. C.'s representatives filed their bill to compel A. to convey said lands to them, alleging themselves to be C.'s legal representatives, and also an agreement, on the part of A., to obtain a patent therefor in C.'s name, on being paid his judgment. A.'s

answer denied the agreement. An agreement was proved by two witnesses that A. should relinquish his claim to the land on being paid his debt, etc., and by one witness that the patent was obtained in pursuance of this agreement. The allegation that the lands were to be patented in the name of C. was disproved, and how the patent was obtained nowhere appeared; but, as A. could only obtain a patent in his own name as a claimant under C., it was *held*, that the presumption was that he had an assignment from C., and that although, when A. purchased, lands held by an equitable title were not liable to be sold under a *fi. fa.*, yet that A. had in equity a right to have them appropriated to the payment of his debt, and a sale would have been decreed for that purpose.—*Rowland v. Crawford*, 7 H. & J. 52.

#### § 135.—Admissibility in general.

(a) An assignor of a bill of exchange brought an action against the drawer, the writ reciting that it was for the use of the assignee. On the trial the assignment and notice thereof was admitted. The drawer pleaded payment to plaintiff, who joined issue on such plea. *Held*, that evidence of payment by the drawer to the assignor after the assignment, under an agreement that the latter should take up and deliver the bill to the former, was admissible, as the assignor, to enable the court of law to pass on the equitable rights of the assignee, should have moved to set aside the plea of payment or replied thereto setting out the assignment and notice, thus giving the drawer an opportunity to question the bona fide character of the assignment.—*Shriner v. Lamborn*, 12 Md. 170.

(b) After notice by the drawer of a bill of exchange of a bona fide assignment thereof, no payment by him to the assignor will discharge the debt.—*Shriner v. Lamborn*, 12 Md. 170.

(c) Parol evidence is not admissible to prove that an assignment of stock was intended as a mortgage of the stock, when,

upon the face of the instrument, it appears that there was an absolute assignment.—*Bend v. Susquehanna Bridge & Bank Co.*, 6 H. & J. 128, 14 Am. Dec. 261. [*Cited and annotated* in 47 L. R. A. 259, on effect of transfer of stock on liability for unpaid subscription; in 30 L. R. A. (N. S.) 283, on liability of transferee on unpaid stock subscription.]

#### § 136.—Assignment.

(a) Proof of the assignment is not necessary when the defendant has recognized the assignee as the holder of the claim, and entitled to the payment thereof.—*Lamar v. Manro*, 10 G. & J. 50.

(b) The jury may infer that the assignment was in the handwriting of the obligee from the fact that the obligor treated with and recognized the assignee as the holder of the instrument assigned.—*Lamar v. Manro*, 10 G. & J. 50.

#### § 137.—Weight and sufficiency.

(a) Evidence *held* insufficient to show an equitable assignment of a part of a debt due an insolvent.—*Smith v. Penn-American Plate Glass Co.*, 111 Md. 696, 77 Atl. 264.

#### § 138. Trial, judgment, and review.

##### *Cross-Reference.*

Assignment of cause of action before suit as ground for equitable relief against judgment, see "Judgment," § 424.

(a) What is a legal transfer of property is a question of law which a jury is incompetent to decide.—*Myers v. King*, 42 Md. 65.

(b) On an issue as to whether defendants were liable to plaintiffs as assignees of an open account, the various accounts disclosing the whole transaction, with the repeated promises of defendants to pay, and their admissions that a large sum was due, were circumstances proper to be left to the jury.—*Allstan v. Contee*, 4 H. & J. 351.

#### § 139. Costs.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

# ASSIGNMENTS FOR BENEFIT OF CREDITORS.

## *Scope-Note.*

[INCLUDES voluntary transfers of property in trust to pay or to apply to debts of the assignor, whether made expressly for such purpose or construed in law as operating for the benefit of creditors; nature, requisites, validity, incidents, operation, and effect of such transfers; evidence relating thereto; instruments in writing by which such transfers are made, and delivery, acceptance, recording or registration, and construction thereof; effect of reservations and of preferences of creditors; rights, duties, liabilities, and remedies of such assignors, their assignees and their creditors; and legal proceedings relating thereto.

[EXCLUDES transfers fraudulent as to creditors or subsequent purchasers (see "*Fraudulent Conveyances*"); assignments in violation of or pursuant to insolvent or bankrupt laws (see "*Insolvency*"; "*Bankruptcy*"); and assignments by imprisoned debtors to obtain their discharge (see "*Arrest*"; "*Execution*"). For complete list of matters excluded, see cross-references, post.]

## *Analysis.*

### **I. Requisites and Validity.**

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- § 36. Provisions as to administration and distribution of estate.
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*Cross-References.*

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 Sale of property by assignee as fraud on creditors, see "Fraudulent Conveyances," §§ 40, 104, 200, 286.  
 Sale of property by assignee vesting title as against trustee in bankruptcy, see "Bankruptcy," § 172.  
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 Subrogation of assignee to rights of creditor, see "Subrogation," § 10.  
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 Usurious claims against assignor, see "Usury," § 127.

## I. REQUISITES AND VALIDITY.

### (A) NATURE AND ESSENTIALS OF TRUSTS FOR CREDITORS.

#### § 1. Nature of assignment for creditors.

#### § 2. Conveyances and transactions creating trust.

#### § 3.— In general.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 4.— Transactions constituting general assignments.

(a) An assignment of a claim for personal injuries to the assignor's attorney, in trust, in case a recovery was had, to pay himself one-half of the amount recovered, to pay a physician's bill for services, and, if sufficient remained, to pay the balance to such persons as the assignor should direct, was not

an assignment for the payment of the assignor's debts generally, within Code, art. 16, § 237, requiring every trustee for the benefit of creditors to file with the clerk of the court in which the instrument creating the trust is to be recorded a bond, etc., and providing that no title shall pass to the trustee until such bond is filed; and hence such assignment was valid, in the absence of fraud, without record or the filing of a bond by the trustee.—United Rys. & Electric Co. v. Rowe, 97 Md. 656, 55 Atl. 703.

#### § 5.— Intent to assign.

#### § 6.— Transfers direct to creditors.

#### § 7.— Transfers on agreement of transferee to pay debts.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 8.—Assignments as distinguished from mortgages or pledges.**

*Cross-Reference.*

Mortgages as constructive assignments, see post, § 14.

(a) A deed of lands from a husband and his wife to a trustee, reciting that it is executed "for the purpose of securing the payment of his creditors," is a deed of trust, within Code, art. 21, § 57, and not a technical mortgage.—*Bank of Commerce v. Lanan*, 45 Md. 396.

(b) A deed of trust with a power of sale, given to secure notes, to be loaned by the cestuis que trustent from time to time within a time fixed, and requiring 5 per cent. of each note as loaned to be paid back on account of an old debt, is in effect a mortgage to secure payment of the old debts and the notes, and is not a general assignment, and therefore it is not invalidated by a stipulation that the grantor shall remain in possession until breach.—*Wilson v. Russell*, 13 Md. 494, 71 Am. Dec. 645.

(c) A deed of trust by one not in insolvent circumstances, exacting no releases, with no reservation of the use for himself, is not a voluntary general assignment, but a quasi mortgage to secure the debts specified, and therefore the reservation after the payment of such debts is not void.—*Fouke v. Fleming*, 13 Md. 392.

**§ 9.—Assignments as distinguished from sales or absolute conveyances.**

*Cross-Reference.*

Sales or transfers absolute in form as constructive assignments, see post, § 15.

**§ 10. Constructive assignments.**

**§ 11.—In general.**

*Cross-References.*

Actions to have conveyance or transaction declared a constructive assignment, see post, § 295.

Subject and title of act relating to disposition of property constituting general assignment, see "Statutes," § 115.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 12.—Conveyances or payments to favored creditors.**

*Cross-References.*

See post, §§ 19, 810.

Rights and remedies of creditors as to illegal preferences given before assignment, see post, § 291.

Transactions before assignment as constituting illegal preferences, see post, § 338.

Transfers direct to creditors creating trust, see ante, § 6.

Preferences affecting validity of conveyances as against creditors in general, see "Fraudulent Conveyances," §§ 114-130.

Preferences by bankrupt, see "Bankruptcy," §§ 184, 188, 191, 440.

Right to jury trial on issue of preference, see "Jury," § 14.

Mortgages, see post, § 14.

(a) To avoid a transfer under the insolvent law it is necessary to establish that the debtor made the transfer voluntarily, and also with a view of taking the benefit of that law.—*Syester v. Brewer*, 27 Md. 288.

(b) Code, art. 47, § 8, contemplates as void or voidable only such acts of a debtor in derogation of the rights of his creditors as may be done by him when he knows or believes himself to be insolvent, and has no reasonable expectation of exempting himself from execution without the aid of the insolvent laws.—*Williams v. Cohen*, 25 Md. 486.

(c) Under the insolvent law of 1854, c. 193 (Code, art. 47, § 8), a conveyance in trust for creditors with preference is not void unless at the time of making it the grantor had no reasonable expectation of being exempted from liability or execution on account of his debts without petitioning for the benefit of the insolvent laws.—*McColgan v. Hopkins*, 17 Md. 395.

(d) In a suit to avoid a deed as fraudulent under the insolvent laws, the complainant must allege and prove that the grantor was indebted at the time, and that he made it, or caused it to be made, with a view of taking the benefit of the insolvent laws.—*Faringer v. Ramsay*, 4 Md. Ch. 33.

(e) An assignment of an insolvent debtor will not be set aside on proof of an intent to prefer alone; an intent to prefer and an intent to take advantage of the insolvent law must both be proved.—*Brooks v. Thomas*, 4 Md. Ch. 15.

(f) It is not enough to avoid a deed under the insolvent acts of 1812 and 1816 that the grantor was insolvent when the deed was

executed, and that the grantee knew of such insolvency, but it is necessary that the undue preference should be given "with a view, or under an expectation at the time, of taking the benefit of the insolvent laws"; and a bill brought to vacate a deed under these acts should aver that undue preference was made with such view and such expectation.—*Falconer v. Clark*, 3 Md. Ch. 151. (See Code, art. 47, § 8.)

(g) Under the insolvent law, a transfer to a favored creditor, to be void, must be made with a view of taking the benefit of the insolvent law, and also with intent thereby to give an undue and improper preference. *Held*, that, where a bona fide transfer was made to secure a creditor, and the debtor did not make application for the benefit of the insolvent law until more than two years thereafter the transfer must be sustained.—*Powles v. Dilley*, 2 Md. Ch. 119.

(h) To avoid a deed, under the acts of 1812, c. 77, and 1816, c. 221, it is necessary to show, not only that an undue and improper preference was given by the debtor, but also that this was done with a view or under the expectation of taking the benefit of the insolvent laws.—*Glenn v. Baker*, 1 Md. Ch. 73. (See Code, art. 47, § 8.)

(i) Prior to the act of 1834, c. 283, payments *eo nomine*, by an insolvent debtor, no matter what his views or expectations might be, were not declared to be fraudulent or void.—*Stewart v. Union Bank of Maryland*, 7 Gill 439. (For present statutory provisions, see Code, art. 47, §§ 8, *et seq.*)

(j) The payment of a debt, in June, 1832, by parties at that time in failing circumstances, and who, in October of the same year, applied for the benefit of the insolvent laws, was not void under the insolvent system as it then existed.—*Stewart v. Union Bank of Maryland*, 7 Gill 439.

(k) Act 1812, c. 77, and act 1816, c. 21, though avoiding many acts done by an insolvent, do not include in the number an actual payment of money, bona fide due by him.—*Stewart v. Union Bank of Maryland*, 7 Gill 439. (For present statutory provisions, see Code, art. 47, §§ 8, *et seq.*)

(l) Where the grantor in a deed never becomes an applicant for relief under the insolvent laws, it cannot be pretended that his deed was made with a view of his becoming an insolvent debtor.—*Wheeler v. Stone*, 4 Gill 38.

(m) A deed cannot be condemned as having been made in expectation of becoming insolvent, and with intent to give a preference, under the insolvent laws existing anterior to the act of 1834, c. 293, unless the grantors, at the time of executing the deeds, contemplated taking the benefit of the insolvent laws.—*Cole v. Albers*, 1 Gill 412. (See Code, art. 47, § 8.)

(n) Under the settled construction of the acts of 1812, c. 77, § 1, and 1816, c. 221, § 6, the words "with a view or under an expectation of being or becoming an insolvent debtor" are held to mean, with a view or under an expectation of taking the benefit of the insolvent laws.—*Hickley v. Farmers' & Merchants' Bank of Baltimore*, 5 G. & J. 377. (See Code, art. 47, §§ 8, 14.)

### § 13.—Conveyances to sureties.

### § 14.—Mortgages or other transfers as security.

#### *Cross-References.*

Assignments as distinguished from mortgages, see ante, § 8.

Evidence as to whether instrument constitutes assignment, see post, § 51.

Indebtedness, insolvency, and intent, see ante, § 12.

Mortgages to sureties, see ante, § 13.

What law governs, see post, § 20.

### § 15.—Sales or other transfers absolute in form.

#### *Cross-Reference.*

Assignments as distinguished from sales or absolute conveyances, see ante, § 9.

### § 16.—Judgments, attachments, and executions.

### § 17.—Several instruments or transactions.

#### *Cross-Reference.*

Validity and effect of transactions taking place before general assignment, see post, §§ 112-117, 338.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.



**§ 18. What law governs.***Cross-Reference.*

Constitutional and statutory provisions, see post, § 23.

**§ 19.—In general.***Cross-References.*

Extraterritorial effect of assignments, see post, § 199.

Effect of bankruptcy acts on state laws, see "Bankruptcy," § 9.

(a) Under Code, art. 47, § 14, providing that preferences contained in deeds made by merchants, bankers, etc., being insolvent or in contemplation of insolvency, shall be void, provided the grantor be proceeded against, etc., the making of a deed of assignment for benefit of creditors, which recites that the debtor is insolvent, and contains preferences, constitutes an act of insolvency, and is avoided on proper proceedings. Although the preferred creditors reside in another state, and have agreed to take the deed in satisfaction of all pre-existing debts, yet the deed is not such a contract as that its obligation is protected against state insolvent laws, since it must be taken to have been accepted with regard to the *lex loci rei sitæ*, and the original debts are not impaired.—*Brown v. Smart*, 69 Md. 320, 14 Atl. 468, 17 Atl. 1101.

(b) An assignment executed in this state by a citizen of a foreign state who has become insolvent, and which is in prejudice of the insolvent laws of this state, is not therefore void.—*Union Bank v. Kerr*, 7 Md. 88.

**§ 20.—Assignments of property in another state or country.***Cross-Reference.*

As to extra-territorial effect where no question is raised as to validity, see post, § 199.

**§ 21.—Foreign assignments.***Cross-References.*

Actions by foreign assignees, see post, § 269.

Construction and operation, see post, § 199.

Filing, recording, and registration, see post, § 164.

Assignments by corporations, see "Corporations," § 681.

Reservation of possession or control of property in another state, see post, § 98.

(a) A deed made by a debtor, in Delaware, to trustees for the benefit of his creditors,

in conformity with the laws of that state, but not executed, acknowledged, and recorded according to the laws of Maryland, will not operate to transfer real estate in the latter state.—*Houston v. Nowland*, 7 G. & J. 480.

**§ 22. Common-law assignments.***Cross-References.*

See ante, § 12; post, § 54.

Presumptions, see post, § 51.

(a) An assignment by a debtor, unable to pay his debts in full, of all his property, for the benefit of all his creditors, without favor or preference, is good at common law, and such assignments have been often sanctioned by the court.—*Malcolm v. Hall*, 9 Gill 177, 52 Am. Rep. 688.

**§ 23. Constitutional and statutory provisions.***Cross-References.*

Statutes relating to preferences, see post, § 105.

Statutes requiring recording, see post, § 165.

What law governs, see ante, §§ 18-21.

Statutes adopted from other state, see "Indians," § 39; "Statutes," § 226.

(a) Under Code, art. 47, § 14, providing that preferences contained in deeds made by merchants, bankers, etc., being insolvent or in contemplation of insolvency, shall be void, provided the grantor be proceeded against, etc., the making of a deed of assignment for benefit of creditors, which recites that the debtor is insolvent, and contains preferences, constitutes an act of insolvency, and is avoided on proper proceedings. Although the preferred creditors reside in another state and have agreed to take the deed in satisfaction of all pre-existing debts, yet the deed is not such a contract as that its obligation is protected against state insolvent laws, since it must be taken to have been accepted with regard to the *lex loci rei sitæ*, and the original debts are not impaired.—*Brown v. Smart*, 69 Md. 320, 14 Atl. 468, 17 Atl. 1101.

(b) An assignment executed in this state by a citizen of a foreign state who has become insolvent, and which is in prejudice of the insolvent laws of this state, is not therefore void.—*Union Bank v. Kerr*, 7 Md. 88.

**§ 24. Right to make assignment.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 25.—Debtors in general.***Cross-Reference.*

Power of building and loan association, see "Building and Loan Associations," § 42.

(a) A deed of trust for the benefit of creditors, unless in fraud of their rights, by hindering and delaying them in the collection of their debts, is valid, and binding upon the general unsecured creditors of the grantor.—Sixth Ward Bldg. Ass'n, No. 5, v. Willson, 41 Md. 506.

(b) A general assignment of all of a debtor's property, without reservation, for the benefit of all creditors, and without circumstances of fraud, is not contrary to the insolvent laws.—Malcolm v. Hall, 9 Gill 177, 52 Am. Dec. 688.

(c) A bona fide assignment of property by an insolvent corporation to a trustee for the benefit of all of its creditors is a valid sale and transfer of the property for a valuable consideration.—State v. Bank of Maryland, 6 G. & J. 205, 26 Am. Dec. 561. [*Cited and annotated in 22 L. R. A. 802, 803, on preferences by insolvent corporation; in 5 L. R. A. (N. S.) 890, on preference in public funds deposited in bank becoming insolvent.*]

(d) The banking corporations of the state may provide for the payment of their debts by a transfer in trust of all the property of the bank.—Union Bank of Tennessee v. Ellicott, 6 G. & J. 363. [*Cited and annotated in 23 L. R. A. 314, on set-off against claim in hands of receiver, assignee or trustee for creditors.*]

**§ 26.—Insolvency of debtor.***Cross-Reference.*

See ante, § 12.

(a) The mere fact that a debtor is insolvent at the time of making an assignment for the benefit of his creditors does not render the assignment fraudulent or invalid.—Strauss v. Rose, 59 Md. 525. [*Cited and annotated in 30 L. R. A. 469, 474, 481, 484, on intent to defraud sustaining attachment.*]

(b) The validity of an assignment for the

benefit of creditors does not depend on the insolvency of the debtor.—Sangston v. Gaither, 3 Md. 40.

**§ 27.—Partners.***Cross-References.*

Administration of partnership and individual estate, see post, § 237.

Preferences by firms or partners, see post, §§ 129-132.

Power of partner to bind firm, see "Partnership," § 151.

Power of surviving partner, see "Partnership," § 245.

**§ 28. Debts to be included.***Cross-Reference.*

Construction of assignment, see post, § 195.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 29. Property to be included.***Cross-References.*

Construction and operation of assignment, see post, §§ 174-184.

Description of property, see post, § 58.

Omission as evidence of fraud, see post, § 83.

Prior transfer or other disposition of property rendering assignment fraudulent, see post, § 149.

Reservation of property, see post, §§ 85-103.

(a) A deed of trust for the benefit of creditors, creating preferences and exacting releases, is void unless it appears on its face to convey all the property of the debtor; and where such a deed is executed by partners it must appear to convey both their partnership effects and their individual estates.—Maughlin v. Tyler, 47 Md. 545.

(b) Claims of creditors of a firm cannot be affected by a deed of trust made by an ostensible partner for the benefit of creditors, unless it professes to convey the individual property of all the parties whom the law regards and treats as partners with respect to such creditors.—Maughlin v. Tyler, 47 Md. 545.

(c) An assignment of all the debtor's property for creditors upon condition that they execute releases must include individual as well as partnership property to make the condition binding on creditors.—Loney v. Bayly, 45 Md. 447.

(d) To be free from imputation of fraud under the Statute of Frauds, deeds of trust

for the benefit of creditors made by the members of a partnership, must, on their face, convey all the property of the debtor, as well their individual estate as their partnership effects.—*Citizens' Fire & Life Ins. Co. v. Wallis*, 23 Md. 173.

(e) A deed of trust for the benefit of creditors which professes to convey only the property of the grantors held jointly by them as partners, without including their individual property, is inoperative and void, even without being so declared by a competent court.—*Citizens' Fire, Marine & Life Ins. Co. v. Wallis*, 23 Md. 173.

(f) A deed of trust for the benefit of creditors is valid, though it does not exact releases, nor, upon its face, profess to convey all the grantor's property; but if the deed contains stipulations with creditors for final releases as a condition precedent to a participation in the benefits of the trust, the creditor is required to relinquish forever his claim, and is entitled, as a fair consideration therefor, to a surrender of all the debtor's property.—*Berry v. Matthews*, 13 Md. 537; *Price v. De Ford*, 18 Md. 489.

(g) A deed of trust for creditors conveying "all and singular the goods, wares, merchandise, chattels, effects, rights, and credits of every kind and description" belonging to the grantor, "and all debts and sums of money due, owing, and payable to him, and all books of accounts, bonds, bills, and choses in action, evidences or vouchers touching or concerning the same, and all estate and interest, use, trust, claim, and demand whatsoever of" the grantor "in, unto, and out of all the said property and premises," is void, because it does not convey all the property and estate of the grantor.—*Bridges v. Hindes*, 16 Md. 101.

(h) A deed of assignment, which does not on its face convey all the property of the grantor, is void as against creditors, and extrinsic evidence is not admissible to show that in point of fact it does embrace all the property.—*Barnitz v. Rice*, 14 Md. 24, 74 Am. Dec. 513.

(i) A deed of assignment by a debtor for the benefit of his creditors must, in order to be valid as against impugning creditors,

show affirmatively on its face that it was a conveyance of all his property for the benefit of his creditors.—*Rosenberg v. Moore*, 11 Md. 376.

(j) An assignment for creditors of specific articles of property, which does not, by express terms, purport to convey all the property of the grantor, is not, on that account, absolutely void, but upon proof that the grantor had no other property will stand, if its other provisions are legal.—*Keighler v. Nicholson*, 4 Md. Ch. 86.

(k) An assignment in favor of creditors, though in other respects free from objection, must convey all the property of the grantor, and the onus, in this respect, is upon the party who sets up the deed.—*Keighler v. Nicholson*, 4 Md. Ch. 86.

### § 30. Assignments by firms or partners. *Cross-References.*

See post, § 193.

Construction of assignment as to debts included, see post, § 195.

Constructive assignments, see ante, §§ 11-17.

Description of property, see post, § 58.

Effect of raising assignment, see post, § 283.

Execution of instrument by assignor, see post, § 63.

Failure to include individual property in assignment by firm, see ante, § 29.

Fraud in assignments by firms or partners, see post, § 156.

Jurisdiction of estate, see post, § 218.

Preferences, see post, §§ 129-132.

Property conveyed, see post, § 177.

Who are parties, see post, § 172.

Power of partner to bind firm, see "Partnership," § 151.

### *Annotation.*

Assignment by firm or partner.—2 L. R. A. 328; 6 L. R. A. 569; 10 L. R. A. 521, notes.

Power of one partner to assign partnership real estate for benefit of creditors.—28 L. R. A. 97, note.

Assignment by surviving partner.—6 L. R. A. 569, note.

(a) An assignment by a surviving partner of the firm's property for the benefit of partnership creditors, and of his individual property for the benefit of individual creditors, is valid.—*Riley v. Carter*, 76 Md. 581, 25 Atl. 667, 35 Am. St. Rep. 443, 19 L. R. A. 489. [Cited and annotated in 27 L. R. A. 451, as to when realty considered firm property; in 28 L. R. A. 133, on position of surviving partners in firm realty; in 42 L.

R. A. (N. S.) 343, on mortgage given by incompetent who had not been declared such.]

(b) A member of an ostensible partnership made an assignment of all his property for the benefit of creditors, requiring releases from all creditors participating therein. A creditor of the firm who had agreed to accept under the assignment, and executed a release, afterwards brought suit on his claim. *Held*, that the assignment and release were void, even though the assignor was the actual owner of the partnership property, and no partnership in fact existed; claims of creditors whom the law regards as creditors of a firm cannot be affected by such a deed, unless it professes to convey the individual property of all the parties whom the law regards as partners with respect to such creditors.—*Maughlin v. Tyler*, 47 Md. 545.

### § 31. Partial assignments, or special assignments for particular creditors.

#### *Cross-References.*

Priority of partial assignment over general assignment, see post, § 333.

Title of assignee to property omitted from assignment or inventory, see post, § 181.

Validity of provisions for payment of invalid or fictitious debts, see post, § 157.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 32. Consideration.

(a) A bona fide transfer by a bank of its property, when insolvent, to pay its debts, is based on a valid consideration, and is valid.—*State v. Bank of Maryland*, 6 G. & J. 205, 26 Am. Dec. 561. [*Cited and annotated* in 29 L. R. A. 243, 249, on priority of state or United States in payment; in 1 L. R. A. (N. S.) 255, on preference of claims of state over other creditors; in 5 L. R. A. (N. S.) 890, on preference of public funds deposited in bank becoming insolvent.]

(b) A bona fide transfer by a bank of its property, when insolvent, to pay its debts, is based on a valid consideration, and is valid.—*Union Bank of Tennessee v. Elliott*, 6 G. & J. 363. [*Cited and annotated* in 23 L. R. A. 314, on set-off against claim

in hands of receiver, assignee or trustee for creditors.]

### § 33. Duress or coercion.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 34. Illegality of provisions in general.

#### *Cross-References.*

Fraud, see post, §§ 140-162.

Reservations, see post, §§ 85-103.

Contract as contravening public policy, see "Contracts," § 108.

(a) In a deed of trust for the benefit of creditors, no provision which is manifestly calculated to hinder and delay creditors can be tolerated.—*Maughlin v. Tyler*, 47 Md. 545.

(b) The law does not tolerate any hindrance in assignments for the benefit of creditors, beyond what may be reasonable and necessary for the purposes of the trust. If no time be named within which the assent must be given, or if the time be unreasonable, the deed is void.—*Green v. Trieber*, 3 Md. 11.

(c) An assignment in favor of creditors, which provides that the dividends of the nonassenting shall be divided proportionably among the assenting creditors, has not been held void in this state.—*Keighler v. Nicholson*, 4 Md. Ch. 86.

(d) A deed conveying property, real and personal, in trust, to sell and apply the proceeds (1) to the payment of costs and commissions, and (2) to the full payment of such creditors, named in an annexed schedule, as assent and release within a fixed time, "if the fund be sufficient for the purpose, and the balance, if any," to one of the grantors and his representatives, "but ratably and proportionably, according to the amount of the claims of each of said creditors, if the fund be sufficient to pay the whole," provided the shares of the non-assenting creditors "shall not be distributed among the others," but shall be held by the trustees "subject to the future order and control of" the said grantor, is valid.—*Hollins v. Mayer*, 3 Md. Ch. 343.

(e) An assignment by a debtor, unable to pay his debts in full, of all his property, for the benefit of all his creditors, without favor

or preference, is good at common law, and such assignments have been often sanctioned by the courts.—*Malcolm v. Hall*, 9 Gill 177, 52 Am. Rep. 688.

**§ 35. Provisions as to powers, rights, and liabilities of assignees.**

*Cross-References.*

Provisions as to administration and distribution of estate, see post, § 36.

Provisions rendering assignment fraudulent, see post, §§ 152-155.

(a) An assignment, professing to be for the benefit of creditors generally, of certain goods, stock in trade, and other personal property, contained a clause authorizing and empowering the trustee "to carry on and conduct said business in his discretion, for such time as in his judgment it shall be beneficial to do so, or to sell all of said goods and stock in trade and property at such times, in such manner, and for such prices as he may deem proper, and apply the proceeds," etc. *Held*, that the certain effect of this clause would be to hinder and delay creditors, and, as against them, such provision rendered the deed void.—*Jones v. Syer*, 52 Md. 211, 36 Am. Rep. 366.

(b) An assignment for creditors of a stock in trade, etc., authorized the trustee to carry on the business in his discretion for such time as, in his judgment, it should be beneficial to do so, or to sell all the goods and property at such times, in such manner, and for such prices, as he might deem proper. *Held*, that the effect of such provision would be to hinder and delay creditors, and, as against them, rendered the deed void.—*Jones v. Syer*, 52 Md. 211, 36 Am. Rep. 366.

(c) A trust deed for the benefit of creditors is invalidated by a provision allowing the trustees to sell, etc., "or to retain the property to await a rise in price or a more favorable market, as they may think most advisable," for the claims of creditors cannot be so indefinitely postponed without their consent.—*Maughlin v. Tyler*, 47 Md. 545.

(d) A power given to the trustees in a deed of trust for the benefit of creditors to exercise a general sound discretion in the interest of the trust, and in the exercise of which discretion the direction of a court of

equity may be invoked, will not invalidate the deed.—*Maughlin v. Tyler*, 47 Md. 545.

(e) A provision in a general assignment for the benefit of creditors authorizing the assignee to compromise bad debts does not invalidate the assignment.—*Price v. De Ford*, 18 Md. 489.

(f) It is no valid objection to an assignment for the benefit of creditors, and exacting releases, that it provides that the trustees shall, as soon as conveniently may be, sell and dispose of by public auction, or at private sale, so much and such parts of the stock in trade, property, and estate conveyed "as are in their nature saleable, for the most money that the same will produce, in ready money, or on such terms of credit as the said trustee may approve."—*Farquharson v. Eichelberger*, 15 Md. 63. [*Cited and annotated in 2 L. R. A. (N. S.) 176, 179, on necessity of word "heirs" to pass fee to trustee.*]

(g) It is no objection to an assignment for the benefit of creditors that it provides that the trustees shall not be "accountable for any loss or damage which may happen in and about the management or disposal of the trust estate, unless the same shall be occasioned by their willful neglect or default."—*Farquharson v. Eichelberger*, 15 Md. 63. [*Cited and annotated in 2 L. R. A. (N. S.) 176, 179, on necessity of word "heirs" to pass fee to trustee.*]

(h) A clause in a deed of trust for the benefit of creditors, conveying individual and partnership assets in several firms, authorizing the trustees to sell the property conveyed whenever they think proper and most conducive to the interests of the trust, is not objectionable.—*Maennel v. Murdock*, 13 Md. 163.

(i) A clause in a trust deed which provides that neither the trustees nor their representatives shall be answerable for, or bound to make good, any loss that may happen to the trust estate, unless the same be consequent upon their willful commission, omission, or neglect, is unobjectionable.—*Maennel v. Murdock*, 13 Md. 163.

(j) It is not fatal to a deed of trust for creditors that it allows the assignees to ap-

point attorneys to execute the trusts, and to remove them at pleasure.—*Maennel v. Murdock*, 13 Md. 163.

(k) Sales under an assignment for the benefit of creditors need not always be made immediately and for cash, whether well or ill for the creditors; but this may be left to the sound discretion of the trustee, and the assignment must not confine him by unreasonable provisions.—*Inloes v. American Exch. Bank*, 11 Md. 173, 69 Am. Dec. 190.

(l) A provision in an assignment giving the trustee power, at his discretion, to sell the property (a stock of goods in trade) "gradually in the manner and on the terms in which, in course of their business," the grantors "have sold and disposed of their merchandise," renders the deed void upon its face, and it cannot be aided by parol proof that it was inserted for the benefit of creditors, and was designed to, and did, operate for their advantage.—*Inloes v. American Exch. Bank*, 11 Md. 173, 69 Am. Dec. 190.

(m) Though a debtor may secure one creditor to the exclusion of others, yet, if such a provision in a deed of assignment is followed by other provisions giving the assignee discretion as to the appointment of agents, and impliedly giving him the right to sell on credit, and providing that the assigned property be sold gradually and in the manner in which it was sold by the assignor, the assignment will be declared void for fraud.—*American Exch. Bank v. Inloes*, 7 Md. 380. [*Cited and annotated in 26 L. R. A. 596, 597, on right to attach property in hands of assignee for creditors.*]

(n) In a deed of trust for the benefit of creditors, a power given to the trustee to sell property "gradually, according to the terms and manner of the grantor's business," will vacate the deed as to creditors.—*American Exch. Bank v. Inloes*, 7 Md. 380. [*Cited and annotated in 26 L. R. A. 596, 597, on right to attach property in hands of assignee for creditors.*]

(o) When a deed gives the trustee power to change the order of preferences, it is void.—*Green v. Trieber*, 3 Md. 11.

(p) A reservation of power to the trustee to mortgage the property conveyed to him,

if he should deem it necessary for purposes of the trust, does not vitiate an assignment for the benefit of creditors.—*Beatty v. Davis*, 9 Gill 211.

### § 36. Provisions as to administration and distribution of estate.

#### *Cross-References.*

Partial illegality, see post, § 42.

Provisions as to powers, rights, and liabilities of assignee, see ante, § 35.

Provisions for expenses of trust, see post, § 125.

Provisions rendering assignment fraudulent, see post, §§ 152-155.

Validity of preferences for attorney's fees, see post, § 124.

(a) An assignment, professing to be for the benefit of creditors generally, of certain goods, stock in trade and other personal property, contained a clause authorizing and empowering the trustee "to carry on and conduct said business in his discretion, for such time as in his judgment it shall be beneficial to do so, or to sell all of said goods and stock in trade and property at such times, in such manner, and for such prices as he may deem proper, and apply the proceeds," etc. *Held*, that the certain effect of this clause would be to hinder and delay creditors, and, as against them, such provision rendered the deed void.—*Jones v. Syer*, 52 Md. 211, 36 Am. Rep. 366.

(b) A power given to the trustees in a deed of trust for the benefit of creditors to exercise a general sound discretion in the interest of the trust, and in the exercise of which discretion the direction of a court of equity may be invoked, will not invalidate the deed.—*Maughlin v. Tyler*, 47 Md. 545.

(c) A provision in a general assignment for the benefit of creditors authorizing the assignee to compromise bad debts does not invalidate the assignment.—*Price v. De Ford*, 18 Md. 489.

(d) N., by a sealed instrument, appointed K. his attorney, with power to collect and compromise debts due to him, the collections to be accounted for to N., and, after deduction of a commission for services, "to make as just and satisfactory dividend thereof to my creditors as he can, and settlement with them." K. gave notice, through a newspaper, to creditors to file their claims preparatory to a dividend, and part of them did

so. *Held*, that, even if the instrument could be held to be a sufficient assignment, still, as it did not absolutely, and under all circumstances, devote the property to the payment of the assignor's debts, and as there was no evidence or presumption of the creditor's assent thereto, it was not valid as against attachment by a creditor by process of garnishment.—*Kalkman v. McElderry*, 16 Md. 56. [*Cited and annotated in 24 L. R. A.* 370, on necessity for acceptance of assignment or deed of trust for creditors.]

(e) It is no valid objection to an assignment for the benefit of creditors, and exacting releases, that it provides that the trustees shall, as soon as conveniently may be, sell and dispose of by public auction, or at private sale, so much and such parts of the stock in trade, property, and estate conveyed "as are in their nature saleable, for the most money that the same will produce, in ready money, or on such terms of credit as the said trustee may approve."—*Farquharson v. Eichelberger*, 15 Md. 63. [*Cited and annotated in 2 L. R. A. (N. S.)* 176, 179, on necessity of word "heirs" to pass fee to trustee.]

(f) It is no objection to an assignment for the benefit of creditors that it provides that the trustees shall not be "accountable for any loss or damage which may happen in or about the management or disposal of the trust estate, unless the same shall be occasioned by their willful neglect or default."—*Farquharson v. Eichelberger*, 15 Md. 63. [*Cited and annotated in 2 L. R. A. (N. S.)* 176, 179, on necessity of word "heirs" to pass fee to trustee.]

(g) A clause in a deed of trust for the benefit of creditors conveying individual and partnership assets of the grantors in several firms, directing the trustees "to pay in such order and priority, and out of such part of the trust funds, as by law they may be entitled to be paid, all such creditors of the parties of the first part, being creditors in any of the co-partnership or individual relations aforesaid, as shall within 60 days assent to the deed and execute releases," is entirely unobjectionable, as it displays an upright intention to submit all legal questions to the adjudication of the tribunals

constituted for that purpose.—*Maennel v. Murdock*, 13 Md. 163.

(h) A clause in a trust deed which provides that neither the trustees nor their representatives shall be answerable for, or bound to make good, any loss that may happen to the trust estate, unless the same be consequent upon their wilful commission, omission, or neglect is unobjectionable.—*Maennel v. Murdock*, 13 Md. 163.

(i) A direction to trustees to sell whenever they should think most proper and conducive to the interests of the trust is not objectionable.—*Maennel v. Murdock*, 13 Md. 163.

(j) It is not fatal to a deed of trust for creditors that it allows the assignees to appoint attorneys to execute the trusts, and to remove them at pleasure.—*Maennel v. Murdock*, 13 Md. 163.

(k) A clause in a deed of trust for the benefit of creditors, conveying individual and partnership assets in several firms, authorizing the trustees to sell the property conveyed whenever they thought proper and most conducive to the interests of the trust, is not objectionable.—*Maennel v. Murdock*, 13 Md. 163.

(l) Sales under an assignment for the benefit of creditors need not always be made immediately and for cash, whether well or ill for the creditors; but this may be left to the sound discretion of the trustee, and the assignment must not confine him by unreasonable provisions.—*Inloes v. American Exch. Bank*, 11 Md. 173, 69 Am. Dec. 190.

(m) A provision in an assignment giving the trustee power, at his discretion, to sell the property (a stock of goods in trade) "gradually in the manner and on the terms in which, in the course of their business," the grantors "have sold and disposed of their merchandise," renders the deed void upon its face, and it cannot be aided by parol proof that it was inserted for the benefit of creditors, and was designed to, and did, operate to their advantage.—*Inloes v. American Exch. Bank*, 11 Md. 173, 69 Am. Dec. 190.

(n) Though a debtor may secure one creditor to the exclusion of others, yet, if such a provision in a deed of assignment is fol-

lowed by other provisions giving the assignee discretion as to the appointment of agents, and impliedly giving him the right to sell on credit, and providing that the assigned property be sold gradually and in the manner in which it was sold by the assignor, the assignment will be declared void for fraud.—*American Exch. Bank v. Inloes*, 7 Md. 380. [*Cited and annotated in 26 L. R. A. 596, 597, on right to attach property in hands of assignee for creditors.*]

(o) In a deed of trust for the benefit of creditors, a power given to the trustee to sell property "gradually, according to the terms and manner of the grantor's business," will vacate the deed as to creditors.—*American Exch. Bank v. Inloes*, 7 Md. 380. [*Cited and annotated in 26 L. R. A. 596, 597, on right to attach property in hands of assignee for creditors.*]

(p) When a deed gives the trustee power to change the order of preferences, it is void.—*Green v. Trieber*, 8 Md. 11.

(q) A reservation of power to the trustee to mortgage the property conveyed to him, if he should deem it necessary for the purposes of the trust, does not vitiate an assignment for the benefit of creditors.—*Beatty v. Davis*, 9 Gill 211.

### § 37. Conditions imposed on creditors in general.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 38. Purpose to compel compromise or settlement.

(a) Where an intent to coerce or force creditors into the terms of the debtor is apparent on the deed of assignment, it may be treated as a fraud.—*Albert v. Winn*, 7 Gill 446. [*Cited and annotated in 13 L. R. A. (N. S.) 925, on validity of chattel mortgage fraudulent as to part of property.*]

### § 39. Stipulations for releases.

#### Cross-References.

Construction of stipulation for release, see post, § 171.

Releases by creditors on distribution of assets, see post, § 326.

Stipulations affecting validity of deed of trust to secure creditors, see "Fraudulent Conveyances," § 110.

(a) A deed of trust for the benefit of cred-

itors, creating preferences and exacting releases, is void unless it appears on its face to convey all the property of the debtor.—*Maughlin v. Tyler*, 47 Md. 545.

(b) A deed of trust for the benefit of creditors is not invalidated by exacting releases as a condition of participating therein.—*Coakley v. Weil*, 47 Md. 277. [*Cited and annotated in 29 L. R. A. 682, on firm assumption of partners' individual debts.*]

(c) A debtor in failing circumstances, in assigning for the benefit of his creditors, may stipulate for releases, provided his deed is made bona fide, and conveys all his property.—*Foley v. Bitter*, 34 Md. 646. [*Cited and annotated in 30 L. R. A. 475, 481, 484, on intent to defraud sustaining attachment.*]

(d) A deed of trust for the benefit of creditors is valid, though it does not exact releases.—*Price v. De Ford*, 18 Md. 489.

(e) An assignment for the benefit of creditors, and exacting releases, conveyed property in these words: "All stock in trade and merchandise, goods, chattels and effects, and promissory notes, securities and evidences of debt, and claims or demands of, or belonging to, or in any wise or manner claimable by me." *Held*, that this deed was void as against creditors, because it did not on its face convey all the property of the grantor, and extrinsic evidence was not admissible to show that in point of fact it did embrace all the property which the grantor had at the time of its execution.—*Barnitz v. Rice*, 14 Md. 24, 74 Am. Dec. 513.

(f) An assignment for the benefit of creditors, exacting releases as a condition on which they may participate in the fund, must transfer all the debtor's estate; and the burden is upon the party who sets up the deed to show that it embraces all the property of the grantor.—*Keighler v. Nicholson*, 4 Md. Ch. 86; *Sangston v. Gaither*, 3 Md. 40.

(g) An assignment for the benefit of creditors, exacting releases as the condition on which they may participate in the fund, must transfer all the debtor's estate.—*Green v. Trieber*, 3 Md. 11.

(h) A deed of trust, conveying real and



personal property, to apply the proceeds to the payment of costs and commissions, and to the full payment of such creditors as agree to release their claims against the grantor within a fixed time, and the balance, if any remaining, to be paid to one of the grantors and his representatives, is valid.—*Hollins v. Mayer*, 3 Md. Ch. 343.

(i) A deed conveying to a trustee all the debtor's property, to be sold, and the proceeds applied (after payment of the expenses of the trust, and of a certain mortgage on the property) to the payment and satisfaction of the claims of all creditors who within a certain time should execute releases, and to apply the balance, if any, to the payment of claims of all other creditors ratably, is valid.—*Kettlewell v. Stewart*, 8 Gill 472.

(j) An assignment by a debtor of all his property for the benefit of creditors, upon condition that each shall execute a previous release of his whole debt, or be postponed until all the creditors who have executed such releases shall be paid in full, is invalid.—*Albert v. Winn*, 7 Gill 446. [*Cited and annotated in 13 L. R. A. 925, on validity of chattel mortgage fraudulent as to part of property.*]

#### § 40. Validity as between parties.

##### *Cross-References.*

See post, § 184.

Validity as to subsequent creditors, see post, § 41.

Validity of transfers which may be declared constructive assignments, see ante, § 12.

Who may attack assignment, see post, § 47.

(a) An assignment of property by a husband and wife for the common benefit of their creditors, which did not embrace the entire property of the grantors, although void against creditors, under St. 13 Eliz. (Alex. Brit. Stat. [Coe's ed.] 499), is nevertheless binding on the grantors.—*Schuman v. Peddicord*, 50 Md. 560.

#### § 41. Validity as to subsequent creditors.

##### *Cross-Reference.*

Validity as between parties, see ante, § 40.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 42. Partial invalidity.

##### *Cross-Reference.*

Effect of preference of fictitious debt, see post, § 137.

(a) Where a conveyance is good in part and bad in part, as being a fraud on creditors, it is void in toto.—*Albert v. Winn*, 7 Gill 446. [*Cited and annotated in 13 L. R. A. (N. S.) 925, on validity of chattel mortgage fraudulent as to part of property.*]

#### § 43. Acceptance of trust by assignee.

#### § 44. Notice to and acceptance by creditors.

##### *Cross-References.*

See post, § 96.

Attachment or garnishment, see post, § 193.

Effect of acceptance as estoppel to attack assignment, see post, § 342.

Estoppel to claim under assignment, see post, § 297.

Necessity of acceptance in order to claim under assignment, see post, § 296.

Notice to debtor of creditor's assignment, see post, § 187.

Revocation of assignment, see post, § 50.

Secret agreement to induce assent, see post, § 112.

##### *Annotation.*

Necessity of acceptance of an assignment or deed of trust for creditors.—24 L. R. A. 369, note.

(a) N., by a sealed instrument, appointed K. his attorney, with power to collect and compromise debts due to him, the collections to be accounted for to N., and, after deduction of a commission for services, "to make as just and satisfactory dividend thereof to my creditors as he can, and settlement with them." K. gave notice, through a newspaper, to creditors to file their claims preparatory to a dividend, and part of them did so. *Held*, that, even if the instrument could be held to be a sufficient assignment, still, as it did not absolutely and under all circumstances devote the property to the payment of the assignor's debts, and as there was no evidence or presumption of the creditor's assent thereto, it was not valid as against attachment by a creditor by process of garnishment.—*Kalkman v. McElderry*, 16 Md. 56. [*Cited and annotated in 24 L. R. A. 370, on necessity for acceptance of assignment or deed of trust for creditors.*]

(b) Though a deed of assignment required creditors to file their releases within 60 days

in order to come in among the preferred creditors, it was not void, in the absence of fraud, because no notice was by the deed required to be given such creditors, as the recording of the assignment was sufficient notice.—*Farquharson v. Eichelberger*, 15 Md. 63. [Cited and annotated in 2 L. R. A. (N. S.) 176, 179, on necessity of word "heirs" to pass fee to trustee.]

(c) Judgment having been rendered prior to 1839 against B. and his sureties, they in that year conveyed their property in trust, to be sold for the payment of judgments of other creditors according to their legal priorities. The trustees sold a part of the estate to plaintiff, the purchase money being applied to the discharge of elder judgments, which were thereupon assigned to the purchaser; a full and fair value having been paid for the land. In 1844 defendants revived, by scire facias, certain judgments recovered by them in 1838, against B. and others, which were junior to the judgments paid off by plaintiff. Plaintiff, who was a nonresident, was not summoned under the scire facias, and defendants proceeded to sell the land on the lien of their judgments. *Held*, that defendants, not having assented to or participated in the formation of the trust created by B. and his sureties, and not having ratified the same, are not bound by its terms.—*Barnes v. Dodge*, 7 Gill 109.

#### § 45. Delivery of possession.

##### *Cross-References.*

Assignment by principal contractor affecting subcontractor's right to mechanic's lien, see "Mechanics' Liens," § 114. Retention of possession by assignor as element or evidence of fraud, see post, § 159.

Right of assignee to possession for purposes of administration of estate, see post, § 225.

#### § 46. Transactions after assignment affecting validity.

##### *Cross-Reference.*

Subsequent transaction rendering assignment fraudulent, see post, § 160.

#### § 47. Persons entitled to attack assignment.

##### *Cross-References.*

Estoppel to attack, see post, § 342.

Right to have assignment set aside, see post, § 341.

Validity as between parties, see ante, § 40.

#### § 48. Validation or ratification of defective or invalid assignment.

##### *Cross-Reference.*

Estoppel to attack assignment, see post, § 342.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 49. Amendment or modification.

(a) Two assignments executed within a few days of each other, and both defective, cannot be coupled together so as to make one good assignment.—*Bridges v. Hindes*, 16 Md. 101.

#### § 50. Revocation.

##### *Cross-References.*

Composition with creditors, see post, § 361.

Compromise by creditors, see post, § 816. Discontinuance of proceedings under assignment, see post, § 283.

Termination of trust, see post, § 197.

#### § 51. Evidence to establish assignment, or as to validity thereof.

##### *Cross-References.*

Evidence as to execution, see post, § 62.

Evidence as to fraud, see post, § 161.

Evidence as to preferences, see post, § 138.

Evidence as to prior claims or liens constituting illegal preferences, see post, § 338.

Evidence as to reservations, see post, § 100.

Evidence in actions by or against assignee, see post, § 278.

Evidence in actions to set aside assignment, see post, § 351.

Foreign assignments, see post, § 199.

Parol evidence to aid description, see post, § 58.

Presumptions as to acceptance by creditors, see ante, § 44.

(a) An assignment for the benefit of creditors, void on its face, cannot be helped by parol evidence to show that the vicious provisions were inserted for the benefit of the creditors.—*Inloes v. American Exchange Bank*, 11 Md. 173, 69 Am. Dec. 190.

(b) The validity of a deed of trust for creditors must be determined by the instrument impeached, without regard to extrinsic facts as to motive.—*Malcolm v. Hodges*, 8 Md. 418.

**(B) FORM AND REQUISITES OF INSTRUMENTS.***Cross-References.*

Necessity of acceptance by assignee and creditors, see ante, §§ 43, 44.

Alteration, see "Alteration of Instruments," § 12.

**§ 52. Necessity of writing.****§ 53. Parties to instrument.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 54. Nature and form in general.***Cross-Reference.*

Fraud, see post, §§ 154, 155.

(a) The omission of the prefix "in" before the word "sufficient," in that part of a deed of trust for the benefit of creditors which directs the pro rata distribution of the proceeds in case they are "sufficient" to pay all the creditors in full, does not invalidate the deed, this being a mere inadvertency.—Pfaff v. Prag, 79 Md. 369, 29 Atl. 824.

(b) In an assignment for benefit of creditors, any apt words which will convey all the debtor's property, and negative any presumption that there is other property, are sufficient.—Barnitz v. Rice, 14 Md. 24, 74 Am. Dec. 513.

(c) A trust deed to pay, in such order and out of such funds as by law they are entitled, such creditors, etc., is good.—Maennel v. Murdock, 13 Md. 164.

**§ 55. Description of assignor, his residence and business.****§ 56. Recitals of grounds for assignment.****§ 57. Designation of assignee.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 58. Description of property.***Cross-References.*

Construction of assignment with reference to property included, see post, §§ 174-183.

Estates created by assignment, see post, § 184.

Schedule of assets, see post, §§ 71-74.

(a) Under Code, art. 21, § 9, providing that all deeds conveying real estate shall contain a description of the real estate sufficient to identify the same with reasonable certainty, a deed of trust for the

benefit of creditors is valid where it assigns "all and singular the real or personal estate, wheresoever situate, and all other property, of every nature, kind, and description, wheresoever situate, belonging to" the grantors.—Roberts v. Roberts, 102 Md. 131, 62 Atl. 161, 1 L. R. A. (N. S.) 782, 111 Am. St. Rep. 344; Landon v. Shriver's Estate, Id. [Cited and annotated in 1 L. R. A. (N. S.) 1005, on vested remainder after life tenancy with power of disposal.]

(b) A general reservation of such property as is exempt by law from execution does not invalidate an assignment for the benefit of creditors.—Mahr v. Pinover, 67 Md. 480, 10 Atl. 289.

(c) A deed, in favor of creditors, of specific articles of property, which does not by express terms purport to convey all the property of the debtor, is not on that account absolutely void, but, upon proof that the grantor had no other property, will stand, if its other provisions are valid.—Keighler v. Nicholson, 4 Md. Ch. 86.

**§ 59. Description of debts.***Cross-Reference.*

Schedule of debts, see post, §§ 77-80.

**§ 60. Provisions as to execution of trust.***Cross-References.*

Effect as hindering or delaying creditor, see post, §§ 153-155.

Validity in general, see ante, §§ 35, 36.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 61. Execution of instrument by assignor.****§ 62.—In general.***Cross-References.*

Execution of assignment under insolvency laws, see "Insolvency," § 53.

Necessity of reciting officer's authority to execute assignment in name of corporation, see "Corporations," § 443.

(a) A conveyance in trust for creditors is not void because the instrument was executed in duplicate.—Riley v. Carter, 76 Md. 581, 25 Atl. 667, 35 Am. St. Rep. 443, 19 L. R. A. 489.

**§ 63.—Partners.***Cross-References.*

See post, § 193.

Power of partner to bind firm, see "Partnership," § 151.

(a) Where the members of a partnership assigned for the benefit of creditors all their individual and partnership assets, including property of two other firms, of which they were also members, their separate creditors cannot complain that the deed was not signed by their co-partner in the last-mentioned firms.—*Maennel v. Murdock*, 13 Md. 163.

§ 64. Attestation.

§ 65. Oath of assignor.

§ 66. Acknowledgment.

*Cross-Reference.*

Taking and certificate of acknowledgment in general, see "Acknowledgment," § 33.

(a) It is not essential to the validity of a deed conveying real and personal property in trust for the benefit of creditors that an affidavit by the trustee that the consideration thereof was bona fide should be appended thereto.—*Hoopes v. Knell*, 31 Md. 550; *Mackintosh v. Corner*, 33 Md. 598.

§ 67. Delivery to assignee.

*Cross-Reference.*

Assignment taking effect upon delivery, see post, § 187.

§ 68. Formal assent of assignee.

*Cross-Reference.*

Necessity of acceptance, see ante, § 43.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 69. Formal assent of creditors.

*Cross-Reference.*

Necessity of acceptance, see ante, § 44.

(a) N., by a sealed instrument, appointed K. his attorney, with power to collect and compromise debts due to him, the collections to be accounted for to N., and, after deduction of a commission for services, "to make as just and satisfactory dividend thereof to my creditors as he can, and settlement with them." K. gave notice, through a newspaper, to creditors to file their claims preparatory to a dividend, and part of them did so. *Held*, that even if the instrument could be held to be a sufficient assignment, still, as it did not absolutely and under all circumstances devote the property to the payment of the assignor's debts, and as there was no evidence or presumption of the creditor's

assent thereto, it was not valid as against attachment by a creditor by process of garnishment.—*Kalkman v. McElderry*, 16 Md. 56. [Cited and annotated in 24 L. R. A. 370, on necessity for acceptance of assignment or deed of trust for creditors.]

(b) Though a deed of assignment required creditors to file their releases within 60 days in order to come in among preferred creditors, it was not void, in the absence of fraud, because no notice was by the deed required to be given such creditors, as the recording of the assignment was sufficient notice.—*Farquharson v. Eichelberger*, 15 Md. 63. [Cited and annotated in 2 L. R. A. (N. S.) 176, 179, on necessity of word "heirs" to pass fee to trustee.]

(c) Judgment having been rendered prior to 1839 against B. and his sureties, they in that year conveyed their property in trust, to be sold for the payment of judgments of other creditors according to their legal priorities. The trustees sold a part of the estate to plaintiff, the purchase money being applied to the discharge of elder judgments, which were thereupon assigned to the purchaser; a full and fair value having been paid for the land. In 1844 defendants revived, by scire facias, certain judgments recovered by them in 1838, against B. and others, which were junior to the judgments paid off by the plaintiff. Plaintiff, who was a nonresident, was not summoned under the scire facias, and defendants proceeded to sell the land on the lien of their judgments. *Held*, that defendants, not having assented to or participated in the formation of the trust created by B. and his sureties, and not having ratified the same, are not bound by its terms.—*Barnes v. Dodge*, 7 Gill 109.

§ 70. Inventory or schedule of assets.

*Annotation.*

Effect of failure to file on right to attach property in hands of assignee.—26 L. R. A. 594, note.

§ 71.—Necessity.

§ 72.—Sufficiency.

*Cross-References.*

Omission of property, see post, § 83.

Schedule or list of debts, see post, § 78.

§ 73.—Verification.

§ 74.—Annexing or filing.

**§ 75.— Failure to make or file.****§ 76. Schedule or list of debts.***Annotation.*

Form and essentials of schedule.—3 L. R. A. 140; 6 L. R. A. 109; 12 L. R. A. 809, notes.

**§ 77.— Necessity.***Cross-References.*

Estoppel to attack assignment, see post, § 342.

Inventory or schedule of assets, see ante, § 71.

**§ 78.— Sufficiency.***Cross-References.*

Inventory or schedule of assets, see ante, 72.

Omission of property as evidence of fraud, see post, § 83.

**§ 79.— Verification.***Cross-Reference.*

Mode of administering oath, see "Oath," § 3.

**§ 80.— Annexing or filing.****§ 81.— Failure to make or file.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 82. Formal defects.**

(a) The omission of the prefix "in" before the word "sufficient," in that part of a deed of trust for the benefit of creditors which directs the pro rata distribution of the proceeds in case they are "sufficient" to pay all the creditors in full, does not invalidate the deed, this being a mere inadvertency.—Pfaff v. Prag, 79 Md. 369, 29 Atl. 824.

(b) In an assignment for benefit of creditors, any apt words which will convey all the debtor's property and negative any presumption that there is other property, are sufficient.—Barnitz v. Rice, 14 Md. 24, 74 Am. Dec. 513.

(c) A trust deed to pay, in such order and out of such funds as by law they are entitled, such creditors, etc., is good.—Maennel v. Murdock, 13 Md. 163.

(d) A deed, in favor of creditors, of specific articles of property, which does not by express terms purport to convey all the property of the debtor, is not on that account absolutely void, but, upon proof that the grantor has no other property, will stand, if its other provisions are valid.—Keighler v. Nicholson, 4 Md. Ch. 86.

**§ 83. Omission of property.***Cross-References.*

Sufficiency of inventory or schedule of assets, see ante, § 72.

Title of assignee to property omitted from assignment or inventory, see post, § 181.

**§ 84. Omission of debts.***Cross-Reference.*

Sufficiency of schedule or list of debts, see ante, § 78.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**(C) RESERVATIONS.***Cross-References.*

Rights of assignee as to property illegally reserved, see post, § 229.

Title of assignee to property omitted from assignment or inventory, see post, § 181.

As element or evidence of fraud in conveyances in general, see "Fraudulent Conveyances," §§ 109-113.

Creditors' suit to reach reservation, see "Creditors' Suit," § 8.

**§ 85. Right of debtor to retain and apply assets.****§ 86. Intent of debtor.***Cross-Reference.*

Evidence as to reservation, see post, § 100.

**§ 87. Transactions before assignment.****§ 88. Reservation of powers as to assignment or assignee.**

(a) An agreement, after the execution of a deed, "not to put it upon record for a few days," is not such a secret agreement as will bring the deed within the operation of the principle that a debtor cannot, in a voluntary deed for the benefit of creditors, reserve any part of the property for his own benefit, or stipulate for any advantage to himself or family, without rendering the deed void.—Hoopes v. Knell, 31 Md. 550.

(b) When a deed reserves to the grantor the power of making leases, or of revoking or altering the trusts, or of charging the estate, it is void.—Green v. Trieber, 3 Md. 11.

**§ 89. Provisions in assignment for benefit of assignor.****§ 90.— In general.****§ 91.— Payments to assignor or others.****§ 92.— Employment of assignor or others.***Cross-Reference.*

Transactions after assignment as element or evidence of fraud, see post, § 160.

**§ 93.—Support of assignor or his family.**

(a) A reservation for the support of an insolvent debtor and his family is void as to creditors.—*Green v. Trieber*, 3 Md. 11.

**§ 94. Withholding assets from assignment.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 95. Reservation in assignment of part of property.****§ 96.—In general.**

(a) A deed executed in Virginia by an express and transportation company established under the laws of that state purported to convey its property to trustees for the benefit of creditors, but reserved to itself the use and possession of the property for a certain time, required the trustees to pay out of the trust fund all debts incurred by the company to its officers and agents, and to railroad companies during the same time, and reserved absolutely to the company all compensation for the transportation of express matter not then delivered nor transported. *Held*, that the deed was not upon its face fraudulent or invalid under the law of Virginia.—*Baltimore & O. R. Co. v. Glenn*, 28 Md. 287, 92 Am. Dec. 688. [*Cited and annotated* in 23 L. R. A. 34, on transfer of property out of state by bankruptcy or kindred proceedings.]

(b) A clause in a deed for the benefit of creditors reciting that certain notes pledged by the grantors were made for their accommodation, and directing their return to the several makers upon payment of the indebtedness for which they were pledged, is not a fraudulent reservation of assets.—*Price v. De Ford*, 18 Md. 480.

(c) A debtor cannot, in an assignment, make a reservation, at the expense of his creditors, of any part of his income or property for his benefit, nor for any advantage either to himself or family.—*Green v. Trieber*, 3 Md. 11.

(d) An assignment of all a debtor's property for the benefit of his creditors which retains a portion for his own benefit, or the benefit of his family, is invalid, unless all the creditors assent thereto.—*Green v. Trieber*, 3 Md. 11.

**§ 97.—Exempt property.****Cross-References.**

Assignor's right to exemptions, see post, § 358.

Property passing by assignment, see post, § 182.

(a) An assignment for the benefit of creditors is not void because of a reservation of property exempt by law from execution, such reservation not operating to hinder, delay, or defraud the creditors of any property which in law or equity could be made liable for the payment of debts.—*Muhr v. Pinover*, 67 Md. 480, 10 Atl. 289.

(b) Act 1861, c. 7 (Code, art. 83, § 8), which exempts from execution \$100 worth of property, and was enacted in pursuance of the requirements of Const. art. 3, § 44, is to be construed liberally; and under that statute a debtor may, where he has executed an assignment for the benefit of creditors, retain the amount which by statute is exempt from execution.—*Muhr v. Pinover*, 67 Md. 480, 10 Atl. 289.

**§ 98. Reservation of possession or control of property.**

(a) A deed of trust for the benefit of creditors provided for the retention by the grantor of his land and household goods; the rents of the land to be handed over to the trustees in the deed; the grantor to retain possession of his stock of goods under direction of the trustees, to sell a certain amount, and pay the proceeds to such trustees, after which, under the direction of the trustees, he was to go on with the business. *Held* void as to creditors.—*Price v. Pitzer*, 44 Md. 521. [*Cited and annotated* in 18 L. R. A. 606, 616, on effect of giving mortgagor possession with power of sale on validity of mortgage.]

(b) A deed of trust executed in Virginia by the president, under authority of the directors, of a Virginia corporation, for the purpose of express and transportation business, and domiciled in said state, conveying all its property to trustees for the benefit of creditors, reserving the enjoyment of the property, under the trustees, from its date, September 20th, until November 1st following, unless the trustees should be required by some creditor secured to take possession, and requiring the trustees to pay

all debts that might become due from the company to its officers and agents, and any debts the company might incur for transportation, and reserving to the grantor absolutely all tolls and compensation for the transportation of express matter not yet delivered to the consignees nor transported under existing contracts, is to be construed by the law of Virginia which permits such reservations, and is valid.—*Baltimore & O. R. Co. v. Glenn*, 28 Md. 287, 92 Am. Dec. 688. [*Cited and annotated in 23 L. R. A. 34, on transfer of property out of state by bankruptcy or kindred proceedings.*]

(c) Where an assignment for the benefit of creditors provides that the trustees shall permit the assignor to hold possession of all the property assigned, to take the rents and profits, and to enjoy the use thereof, paying no rent therefor, until a certain stated time, it is void, as creating a trust for the assignor.—*Green v. Trieber*, 3 Md. 11.

(d) A reservation in an assignment permitting the grantor to possess and enjoy all of his property, paying no rent therefor, till a sale be made according to the deed,—he giving bond, with security, to deliver the property on the day of sale, and said bond to be held on the trusts declared in reference to the property—renders the assignment void.—*Green v. Trieber*, 3 Md. 11.

(e) An assignment for the benefit of creditors which reserves the property to the debtor for six, and perhaps 24, months, is void.—*Green v. Trieber*, 3 Md. 11.

(f) When a deed reserves to the grantor the power of making leases, or of revoking or altering the trusts, or of charging the estate, it is void.—*Green v. Trieber*, 3 Md. 11.

(g) Where an insolvent debtor conveys all his property in trust for creditors, but provides that he is to remain in possession of the property on his giving bond for its delivery on the day of sale appointed by the trustees, and inserts in the deed a condition which requires the creditors to extend to him a credit of at least six months, and others which render it invalid as against them, the fact that the bond is as good as the property does not affect the question,

because the effect of the arrangement is to charge the property, and frustrate the recovery of just demands by pursuing it.—*Green v. Trieber*, 3 Md. 11.

### § 99. Reservation of surplus.

(a) The failure of a deed of assignment to dispose of the surplus remaining in the hands of the trustee after paying creditors who may execute releases within a specified time is an implied reservation of the surplus to the grantor, and renders the deed fraudulent in law.—*Whedbee v. Stewart*, 40 Md. 414. [*Cited and annotated in 30 L. R. A. 467, 482, on intent to defraud sustaining attachment.*]

(b) A deed conveying all the debtor's property in trust for creditors who shall accept the benefit thereof and execute releases, but which makes no disposition of the surplus that may remain in the hands of the trustees after paying releasing creditors, is fraudulent and void as against creditors, as such surplus results by implication to the grantor.—*Whedbee v. Stewart*, 40 Md. 414. [*Cited and annotated in 30 L. R. A. 467, 482, on intent to defraud sustaining attachment.*]

(c) An assignment providing for a pro rata distribution among creditors who shall execute releases, "the balance, if any, to be paid over to the grantor," is void on account of the reservation.—*Bridges v. Hindes*, 16 Md. 101.

(d) A deed of trust for the benefit of creditors which does not convey all the property of the debtor, or which expressly or by implication reserves the surplus remaining after satisfying the releasing or preferred creditors, is void. A reservation of the surplus is implied if the deed is silent on the subject.—*Malcolm v. Hodges*, 8 Md. 418.

(e) A deed of trust for the benefit of creditors which does not convey all the property of the debtor, or which expressly or by implication reserves the surplus remaining after satisfying the releasing or preferred creditors, is void.—*Malcolm v. Hodges*, 8 Md. 418.

(f) A reservation of the surplus to the debtor after paying all his debts will not

avoid an assignment for the benefit of creditors.—*Sangston v. Gaither*, 3 Md. 40.

(g) Since it is the duty of a debtor who makes an assignment for the benefit of his creditors to apply all his property to the payment of all his creditors, subject to such preferences as he may declare, the law stamps the assignment as fraudulent and void, where the debtor reserves to himself the surplus after satisfying the creditors specified in the deed, and also the dividends of those who may reject the terms imposed.—*Sangston v. Gaither*, 3 Md. 40.

(h) A reservation to the grantor of any surplus that may remain after paying the assenting creditors will avoid the assignment.—*Green v. Trieber*, 3 Md. 11.

(i) An assignment of all of a debtor's property which provides that one class of creditors shall be preferred to another, and that the surplus, if any remain after payment of debts, shall be paid to the grantor, is good, both at common law and under the statute of 13 Eliz., c. 5 (*Alex. Brit. Stat. [Coe's ed.] 499*), unless it be tainted by fraud.—*Beatty v. Davis*, 9 Gill 211.

#### § 100. Evidence as to reservations.

*Cross-Reference.*

Intent of debtor, see ante, § 86.

#### § 101. Operation and effect.

*Cross-Reference.*

See post, § 249.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in *Decennial and Key Number Digests*, and references therein to *Century Digest*.

### (D) PREFERENCES.

*Cross-References.*

As constituting constructive assignments, see ante, §§ 11-17.

Construction of assignment as to debts preferred and order of payment, see post, § 196.

In foreign assignments, see ante, § 21.

In partial assignments, see ante, § 31.

Prior claims or liens as constituting illegal preferences, see post, § 338.

Rights and remedies of creditors as to illegal preferences, see post, § 291.

Rights of assignee as to preferences, see post, § 230.

Schedule or list of preferred debts, see ante, §§ 77-81.

Setting aside assignment, see post, §§ 341-356.

Statutory preferences in payment of claims, see post, § 308.

Validity and effect of stipulations for releases, see ante, § 39.

What law governs, see ante, §§ 19-21.

As element or evidence of fraud in general, see "Fraudulent Conveyances," §§ 114-130.

By corporation, see "Corporations," §§ 544, 681.

Subject and title of act, see "Statutes," § 117.

§§ 102, 103. (Omitted from the classification used herein.)

#### § 104. Right of debtor to prefer creditor.

*Annotation.*

Right of insolvent debtor to make preferences.—11 L. R. A. 466, note.

Assignment with preferences.—6 L. R. A. 571; 12 L. R. A. 808, notes.

#### § 105. Statutory provisions.

*Cross-Reference.*

Subject and title of act, see "Statutes," § 117.

§ 106. (Omitted from the classification used herein.)

#### § 107. Intent of debtor.

#### § 108. Knowledge and intent of assignee or creditor preferred.

#### § 109. Preference of husband, wife, or other relatives.

#### § 110. Confidential relations of parties.

#### § 111. Preferences not contained in assignment.

#### § 112.—In general.

*Cross-Reference.*

Validity of transactions where assignment is not attacked, see post, § 338.

*Annotation.*

Is a preference by mortgage or sale an assignment for creditors?—37 L. R. A. 337, note.

Conveyance or transfer to indemnify sureties or indorsers as a voluntary assignment for creditors.—31 L. R. A. (N. S.) 332, note.

#### § 113.—Performance of agreements made before assignment.

*Cross-Reference.*

Previous agreement as to preferences contained in assignment, see post, § 119.

#### § 114.—Payments to creditors.

*Cross-Reference.*

Payments as constructive assignments, see ante, § 12.

(a) The fact that an assignor may have paid one creditor in full before the execution of an assignment, however near to the time of its execution, would not of itself be



an objection to the validity of the assignment.—*Farrall v. Farnen*, 5 Atl. 622. (Not reported in the Maryland Reports.)

**§ 115.—Transfers as satisfaction of debts.**

**§ 116.—Mortgages and other transfers as security.**

*Cross-Reference.*

Transactions operating as constructive assignments, see ante, § 14.

**§ 117.—Judgments, attachments, and executions.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 118. Preferences in assignment in general.**

*Cross-Reference.*

Partial assignments, see ante, § 31.

(a) An assignment for the benefit of creditors is not vitiated by giving a preference to particular creditors.—*Foley v. Bitter*, 34 Md. 646; *Coakley v. Weil*, 47 Md. 277; *Strauss v. Rose*, 59 Md. 525.

(b) The fact that a claim preferred by a debtor in making an assignment is stated in the deed of assignment a few dollars more or less than the true amount of such claim will not affect the validity of the assignment.—*Strauss v. Rose*, 59 Md. 525. [*Cited and annotated in 30 L. R. A.* 469, 474, 481, 484, on intent to defraud sustaining attachment.]

(c) Equity does not inquire into the motives which induced a debtor to prefer one creditor to another in an assignment for the benefit of creditors, provided the preference was given in good faith, and the debtor's whole property was dedicated to the use and benefit of his creditors.—*Crawford v. Austin*, 34 Md. 49.

(d) A deed of trust for creditors, with preferences, is not void at common law, nor under the statute of 13 Eliz. (Alex. Brit. Stat. [Coe's ed.] 499).—*McColgan v. Hopkins*, 17 Md. 395.

(e) A deed of trust for the benefit of creditors, and exacting releases, is not void, under the insolvent law of 1854, c. 193, by reason of preferences contained in it.—*Maennel v. Murdock*, 13 Md. 163. (See Code, art. 47, § 14.)

(f) An insolvent, in disposing of the property under his control, may legally prefer one creditor to another if he acts in good faith.—*Beatty v. Davis*, 9 Gill 211.

(g) An assignment providing for the full payment of certain claims, the payment out of the balance of the estate of claims of creditors who signify their assent to the assignment within a certain time, and execute releases, and, after the full satisfaction of all such claims, the payment of the claims of all other creditors out of the residue, if any, is not void, as giving an undue preference to one class of creditors, and requiring all the creditors who may participate in its benefits to execute a general release.—*McCall v. Hinkley*, 4 Gill 128.

**§ 119. Previous agreements as to preference.**

**§ 120. Preference of secured debts.**

**§ 121. Preference of sureties.**

**§ 122. Preference of fiduciary obligations.**

**§ 123. Preference of wages and salaries.**

**§ 124. Preference of attorney's fees.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 125. Preference of expenses of trust.**

(a) It is not a valid objection to an assignment for the benefit of creditors that it provides for the payment, as a preferred debt, "of whatever rent may be due or become due on the store or warehouse rented by the grantor until the stock in trade conveyed by the deed shall be sold or disposed of."—*Farquharson v. Eichelberger*, 15 Md. 63. [*Cited and annotated in 2 L. R. A.* (N. S.) 176, 179, on necessity of word "heirs" to pass fee to trustee.]

**§ 126. Preferences between classes of creditors.**

(a) An assignment of all of a debtor's property, which provides that one class of creditors shall be preferred to another, is good both at common law and under the statute of 13 Eliz. (Alex. Brit. Stat. [Coe's ed.] 499), unless it be tainted by fraud.—*Beatty v. Davis*, 9 Gill 211.

**§ 127. Description of debt preferred.**

*Cross-Reference.*

Schedule of debts, see ante, §§ 77, 78.

**§ 128. Preferences by firms or partners.***Annotation.*

Preference in case of partnership assignment or agreement.—10 L. R. A. 523, note.

**§ 129.— In general.**

(a) Under Code, art. 73, §§ 15, 16, an assignment of a partnership debt, made when insolvent, or in view or insolvency, with the intention of giving a preference to any creditor of such partnership, or of a creditor of a partner, is void as against the creditors of the partnership.—*Lineweaver v. Slagle*, 64 Md. 465, 2 Atl. 693. [*Cited and annotated* in 36 L. R. A. 360, on creditor's right to buy property from debtor to satisfy debt.]

(b) A deed of property in trust for the creditors of a firm, whose members had been members of two previous firms, is not void because it conveys property which formed the assets of the previous firms, and fails to make any provision for the creditors of such firms. The objection is not apparent on the face of the deed, and, to be relied upon, it must be proved by evidence dehors the deed that the property is actually liable to such creditors of the previous firms.—*Price v. De Ford*, 18 Md. 489.

**§ 130.— Assignment by firm.****§ 131.— Assignment by one or more partners.**

(a) On dissolution of a partnership, one member assigned all his interest in the firm assets to his sole co-partner, to be by the latter applied to firm debts. On the same day the latter assigned all his property of every kind for the benefit of his creditors, without priority or preference, except as by law provided, making no mention of partnership liabilities; and the partners soon after offered to settle with their unsecured creditors at 50 cents on the dollar. *Held*, that the object of the transfer and assignment was evidently to defeat the right of partnership creditors to preference in the firm assets, and to coerce them into a settlement of their claims, and as to such creditors the assignment was void.—*Collier v. Hanna*, 71 Md. 253, 17 Atl. 1017. [*Cited and annotated* in 26 L. R. A. 600, on right

to attach property in hands of assignee for creditors; in 30 L. R. A. 486, on intent to defraud sustaining attachment.]

(b) A surviving partner made an assignment, as surviving partner, for the benefit of "all the creditors of the said A., without preference." *Held*, that such assignment was void as against creditors of the partnership, as it violated their prior claim to the partnership assets, and put them on a level with the individual creditors, and that the defect could not be rectified by a subsequent declaratory instrument.—*Gable v. Williams*, 59 Md. 46.

**§ 132.— Assignment by firm and partners.****§ 133. Amount of debts preferred.****§ 134. Preferences fraudulent in fact.****§ 135. Preference for amount exceeding debt.***Cross-Reference.*

See ante, § 118.

*Annotation.*

Effect of preferring usurious debt in assignment.—41 L. R. A. 707.

**§ 136. Preference of invalid debt.****§ 137. Preference of fictitious debt.***Cross-Reference.*

Provisions for payment of invalid or fictitious debts rendering assignment fraudulent, see post, § 157.

**§ 138. Evidence as to preferences.***Cross-References.*

As to prior claims or liens constituting illegal preferences, see post, § 338.  
Evidence as to fraud, see post, § 161.

**§ 139. Curing illegality.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**(E) FRAUD.***Cross-References.*

Instructions as to fraud, see post, § 352.  
Omissions from inventory or schedule as evidence of fraud, see ante, § 83.  
Reservations as evidence of fraud, see ante, §§ 85-103.  
Setting aside assignment, see post, §§ 341-356.  
Solvency of assignor as evidence of fraud, see ante, § 26.  
Attaching creditor's proceedings to set aside fraudulent assignment, see "Attachment," § 224.  
Fraudulent assignment as ground for attachment, see "Attachment," § 43.

**§ 140. Duty of good faith to creditors.***Cross-References.*

See ante, § 112.

Effect of assignment as hindering or delaying creditors, see post, §§ 152-154.

Fraud in provisions of assignment in general, see post, § 151.

(a) An assignment for the benefit of creditors, which, though valid on its face, is made with a fraudulent intent to delay, hinder, and defraud creditors, and which at the time of its execution is intended to be, and by its terms may operate as, an instrument in aid of the fraud, is void as being fraudulent in fact.—*Foley v. Bitter*, 34 Md. 646. [Cited and annotated in 30 L. R. A. 475, 481, 484, on intent to defraud sustaining attachment.]

(b) To render an assignment valid under St. 13 Eliz. c. 5 (Alex. Brit. Stat. [Coe's ed.] 499), it is not enough to show that it was made for a valuable consideration. It must also be bona fide.—*Powles v. Dilley*, 2 Md. Ch. 119. [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

§ 141. (Omitted from the classification used herein.)

**§ 142. Intent, motive, and good faith of parties and beneficiaries.****§ 143.—Intent or motive of debtor in general.**

(a) An assignment for the benefit of creditors is void if executed by the assignor in pursuance of an intent to defraud his creditors.—*Main v. Lynch*, 54 Md. 658. [Cited and annotated in 30 L. R. A. 467, 474, 481, 486, on intent to defraud sustaining attachment.]

(b) An assignment of all a debtor's property for the benefit of his creditors, without preference, is not fraudulent as against a particular creditor by reason of any secret motives of the assignor in making it; thus, a man may make a valid deed even when the purpose of that deed is to prevent one creditor from obtaining a preference by attachment, and to give a preference to another; the latter is a right flowing from the power to prefer.—*Horwitz v. Ellinger*, 31 Md. 492.

**§ 144.—Purpose in making assignment.**

(a) Where a company, finding itself unable to meet all its obligations, made an assignment for the benefit of its creditors without preferences, it will not be presumed to have been done for the purpose of disposing of or concealing its property in fraud of its creditors, where it does not appear that the assignee ever made or sought to make a compromise with any creditor, nor that any direct benefit was to accrue either to the company or to the assignee.—*Pitts. Agr. Works v. Smelser*, 87 Md. 493, 40 Atl. 56.

**§ 145.—Intent to hinder or delay creditors.**

(a) A mortgage executed by a husband to his wife, to be by her assigned to a trustee for the benefit of certain of the husband's creditors, held void, if treated as an assignment for the benefit of creditors, as fraudulent.—*Ressmeyer v. Norwood*, 117 Md. 320, 83 Atl. 347.

(b) In a deed of trust for the benefit of creditors, no provision which is manifestly calculated to hinder and delay creditors can be tolerated.—*Maughlin v. Tyler*, 47 Md. 545.

(c) An assignment in favor of creditors, which provides that the dividends of the non-assenting shall be divided proportionably among the assenting creditors, has not been held void in this state.—*Keighler v. Nicholson*, 4 Md. Ch. 86.

(d) A deed conveying property real and personal, in trust, to sell and apply the proceeds (1) to the payment of costs and commissions, and (2) to the full payment of such creditors, named in an annexed schedule, as assent and release within a fixed time, "if the fund be sufficient for the purpose, and the balance, if any," to one of the grantors and his representatives, "but ratably and proportionably, according to the amount of the claims of each of said creditors, if the fund be sufficient to pay the whole," provided the shares of the non-assenting creditors "shall not be distributed among the others," but shall be held by the trustees "subject to the future order and

control of" the said grantor, is valid.—*Holins v. Mayer*, 3 Md. Ch. 343.

(e) The law does not tolerate any hindrance in assignments for the benefit of creditors, beyond what may be reasonable and necessary for the purposes of the trust. If no time be named within which the assent must be given, or if the time be unreasonable, the deed is void.—*Green v. Trieber*, 3 Md. 11.

**§ 146.—Knowledge, intent, and good faith of assignee and beneficiaries.**

*Cross-Reference.*

Provisions for payment of invalid or fictitious debtor, see post, § 157.

(a) Where a debtor makes a general assignment of all his property for the benefit of his creditors, without any preferences, except such as the law makes, and without exacting releases or conditions, such assignment is valid, without reference to the fraudulent intent of the debtor, provided the trustee is not implicated in the fraud.—*Ferrall v. Farnen*, 67 Md. 76, 8 Atl. 819.

(b) A voluntary assignment by an insolvent debtor, if fraudulent in fact on the part of such debtor, cannot be saved from condemnation by the innocence of the trustee and of the creditors named in the deed.—*Foley v. Bitter*, 34 Md. 646. [*Cited and annotated in 30 L. R. A. 475, 481, 484, on intent to defraud sustaining attachment.*]

(c) An assignee for creditors is not a bona fide purchaser, within the statute of frauds, so as to make a fraudulent assignment valid as to him, if he has no knowledge of the fraud.—*Ferrall v. Farnen*, 5 Atl. 622. (Not reported in the Maryland Reports.)

(d) A deed made by the grantor of all his property for the benefit of all his creditors, with intent to defraud creditors, is null and void, whether the grantee had or had not notice or knowledge of such fraudulent intent.—*Ferrall v. Farnen*, 5 Atl. 622. (Not reported in the Maryland Reports.)

**§ 147. Transactions before assignment.**

**§ 148.—In general.**

(a) That a debtor has fraudulently contracted debts will not affect an assignment

by him for the benefit of his creditors unless such debts are in some way connected with the assignment.—*Strauss v. Rose*, 59 Md. 525. [*Cited and annotated in 30 L. R. A. 469, 474, 481, 484, on intent to defraud sustaining attachment.*]

**§ 149.—Transfer or other disposition of assets.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 150. Defects rendering assignment fraudulent.**

(a) A general reservation of such property as is exempt by law from execution does not invalidate an assignment for the benefit of creditors.—*Muhr v. Pinover*, 67 Md. 480, 10 Atl. 289.

(b) A deed, in favor of creditors, of specific articles of property, which does not by express terms purport to convey all the property of the debtor, is not on that account absolutely void, but, upon proof that the grantor has no other property, will stand, if its other provisions are valid.—*Keighler v. Nicholson*, 4 Md. Ch. 86.

**§ 151. Fraud in provisions of assignment in general.**

(a) An assignment for the benefit of creditors, which, though valid on its face, is made with a fraudulent intent to delay, hinder, and defraud creditors, and which at the time of its execution is intended to be, and by its terms may operate as, an instrument in aid of the fraud, is void as being fraudulent in fact.—*Foley v. Bitter*, 34 Md. 646. [*Cited and annotated in 30 L. R. A. 475, 481, 484, on intent to defraud sustaining attachment.*]

**§ 152. Effect of assignment as hindering or delaying creditors.**

**§ 153.—In general.**

*Annotation.*

Effect generally.—24 L. R. A. 380, note.

(a) An assignment for the benefit of creditors, which, though valid on its face, is made with a fraudulent intent to delay, hinder, and defraud creditors, and which at the time of its execution is intended to be, and by its terms may operate as, an instrument

in aid of the fraud, is void as being fraudulent in fact.—*Foley v. Bitter*, 34 Md. 646. [Cited and annotated in 30 L. R. A. 475, 481, 484, on intent to defraud sustaining attachment.]

(b) To render an assignment valid under St. 13 Eliz. (Alex. Brit. Stat. [Coe's ed.] 499), it is not enough to show that it was made for a valuable consideration. It must also be bona fide.—*Powles v. Dilley*, 2 Md. Ch. 119. [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

**§ 154.— Powers conferred on and directions to assignee.**

*Cross-References.*

Nature and form of assignment in general, see ante, § 54.

Validity of provisions in general, see ante, § 35.

(a) An assignment, professing to be for the benefit of creditors generally, of certain goods, stock in trade and other personal property, contained a clause authorizing and empowering the trustee "to carry on and conduct said business in his discretion, for such time as in his judgment it shall be beneficial to do so, or to sell all of said goods and stock in trade and property at such times, in such manner, and for such prices as he may deem proper, and apply the proceeds," etc. Held, that the certain effect of this clause would be to hinder and delay creditors, and, as against them, such provision rendered the deed void.—*Jones v. Syer*, 52 Md. 211, 36 Am. Rep. 366.

(b) A power given to the trustees in a deed of trust for the benefit of creditors to exercise a general sound discretion in the interest of the trust, and in the exercise of which discretion the direction of a court of equity may be invoked, will not invalidate the deed.—*Maughlin v. Tyler*, 47 Md. 545.

(c) A provision in a general assignment for the benefit of creditors authorizing the assignee to compromise bad debts does not invalidate the assignment.—*Price v. De Ford*, 18 Md. 489.

(d) It is no valid objection to an assignment for the benefit of creditors, and exacting releases, that it provides that the trust-

tees shall, as soon as conveniently may be, sell and dispose of by public auction, or at private sale, so much and such parts of the stock in trade, property, and estate conveyed "as are in their nature saleable, for the most money that the same will produce, in ready money, or on such terms of credit as the said trustee may approve."—*Farquharson v. Eichelberger*, 15 Md. 63. [Cited and annotated in 2 L. R. A. (N. S.) 176, 179, on necessity of word "heirs" to pass fee to trustee.]

(e) It is no objection to an assignment for the benefit of creditors that it provides that the trustees shall not be "accountable for any loss or damage which may happen in or about the management or disposal of the trust estate, unless the same shall be occasioned by their wilful neglect or default."—*Farquharson v. Eichelberger*, 15 Md. 63. [Cited and annotated in 2 L. R. A. (N. S.) 176, 179, on necessity of word "heirs" to pass fee to trustee.]

(f) A clause in a deed of trust for the benefit of creditors, conveying individual and partnership assets in several firms, authorizing the trustees to sell the property conveyed whenever they thought proper and most conducive to the interests of the trust, is not objectionable.—*Maennel v. Murdock*, 13 Md. 163.

(g) A clause in a trust deed which provides that neither the trustees nor their representatives shall be answerable for, or bound to make good, any loss that may happen to the trust estate, unless the same be consequent upon their wilful commission, omission, or neglect is unobjectionable.—*Maennel v. Murdock*, 13 Md. 163.

(h) It is not fatal to a deed of trust for creditors that it allows the assignees to appoint attorneys to execute the trusts, and to remove them at pleasure.—*Maennel v. Murdock*, 13 Md. 163.

(i) Sales under an assignment for the benefit of creditors need not always be made immediately and for cash, whether well or ill for the creditors; but this may be left to the sound discretion of the trustee, and the assignment must not confine him by unreasonable provisions.—*Inloes v. American Exch. Bank*, 11 Md. 173, 69 Am. Dec. 190.

(j) A provision in an assignment giving the trustee power, at his discretion, to sell the property (a stock of goods in trade) "gradually in the manner and on the terms in which, in the course of their business," the grantors "have sold and disposed of their merchandise," renders the deed void upon its face, and it cannot be aided by parol proof that it was inserted for the benefit of creditors, and was designed to, and did, operate to their advantage.—*Inloes v. American Exch. Bank*, 11 Md. 173, 69 Am. Dec. 190.

(k) Though a debtor may secure one creditor to the exclusion of others, yet, if such a provision in a deed of assignment is followed by other provisions giving the assignee discretion as to the appointment of agents, and impliedly giving him the right to sell on credit, and providing that the assigned property be sold gradually and in the manner in which it was sold by the assignor, the assignment will be declared void for fraud.—*American Exch. Bank v. Inloes*, 7 Md. 380. [*Cited and annotated in 26 L. R. A. 596, 597, on right to attach property in hands of assignee for creditors.*]

(l) In a deed of trust for the benefit of creditors, a power given to the trustee to sell property "gradually, according to the terms and manner of the grantor's business," will vacate the deed as to creditors.—*American Exch. Bank v. Inloes*, 7 Md. 380. [*Cited and annotated in 26 L. R. A. 596, 597, on right to attach property in hands of assignee for creditors.*]

(m) When a deed gives the trustee power to change the order of preferences, it is void.—*Green v. Trieber*, 3 Md. 11.

(n) A reservation of power to the trustee to mortgage the property conveyed to him, if he should deem it necessary for the purposes of the trust, does not vitiate an assignment for the benefit of creditors.—*Beatty v. Davis*, 9 Gill 211.

#### § 155.— Limitations of time for acceptance of assignment or settlement of estate.

##### *Cross-References.*

Nature and form of assignment in general, see ante, § 54.

Validity of provisions in general, see ante, § 36.

(a) The law does not tolerate any hindrance in assignments for the benefit of creditors, beyond what may be reasonable and necessary for the purposes of the trust. If no time be named within which the assent must be given, or if the time be unreasonable, the deed is void.—*Green v. Trieber*, 3 Md. 11.

(b) A deed conveying property, real and personal, in trust, to sell and apply the proceeds (1) to the payment of costs and commissions, and (2) to the full payment of such creditors, named in an annexed schedule, as assent and release within a fixed time, "if the fund be sufficient for the purpose, and the balance, if any," to one of the grantors and his representatives, "but ratably and proportionably, according to the amount of the claims of each of said creditors, if the fund be insufficient to pay the whole," provided the shares of the non-assenting creditors "shall not be distributed among the others," but shall be held by the trustees "subject to the future order and control of" the said grantor, is valid.—*Hollins v. Mayer*, 3 Md. Ch. 343.

#### § 156. Fraud in assignments by firms or partners.

##### *Cross-References.*

Operation and effect, see post, § 162.

Preferences, see ante, §§ 129-132.

Right of creditors to set aside assignment, see post, § 341.

Withholding assets from assignment, see ante, § 94.

#### § 157. Provisions for payment of invalid or fictitious debts.

##### *Cross-References.*

Estoppel to attack assignment, see post, § 342.

Partial invalidity, see ante, § 42.

Preference of fictitious debt, see ante, § 137.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 158. Secret agreement with assignee or creditors.

##### *Cross-Reference.*

Secret agreement to induce creditor to assent to assignment, see ante, § 112.

##### *Annotation.*

Necessity of participation of assignee or beneficiaries in fraud of assignor to invalidate assignment.—32 L. R. A. 44, note.

(a) An assignment for the benefit of creditors, which, though valid on its face, is made with a fraudulent intent to delay, hinder, and defraud creditors, and which at the time of its execution is intended to be, and by its terms may operate as, an instrument in aid of the fraud, is void as being fraudulent in fact.—*Foley v. Bitter*, 34 Md. 646. [Cited and annotated in 30 L. R. A. 475, 481, 484, on intent to defraud sustaining attachment.]

(b) To render an assignment valid under St. 13 Eliz. (Alex. Brit. Stat. [Coe's ed.] 499), it is not enough to show that it was made for a valuable consideration. It must also be bona fide.—*Powles v. Dilley*, 2 Md. Ch. 119. [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

#### § 159. Retention of possession by assignor.

##### *Cross-Reference.*

Necessity and sufficiency of delivery of possession, see ante, § 45.

#### § 160. Transactions after assignment.

##### *Cross-References.*

As affecting validity in general, see ante, § 46.

Continuance of assignor's business by assignee, see post, § 236.

Failure of trustee to give bond, see post, § 209.

#### § 161. Evidence as to fraud.

##### *Cross-References.*

Evidence as to preference, see ante, § 138.

Evidence as to reservations, see ante, § 100.

Omissions from inventory or schedule as evidence of fraud, see ante, § 83.

Question for jury, see post, § 352.

##### *Annotation.*

Admissibility of declarations by assignor made out of court as to his purpose in making the assignment attacked as fraudulent as against creditors.—41 L. R. A. (N. S.) 1, note.

(a) A trust deed conveying all of a debtor's property to a trustee for the benefit of all the grantor's creditors, without preferences, is not prima facie fraudulent, under Code, art. 47, § 24, which provides that if any conveyance be made of any goods by certain persons, when insolvent, the same shall be prima facie intended to delay creditors, and the burden of proving the bona

fides of the transaction is on the grantor and grantee; this being aimed only at conveyances hindering creditors.—*Pfaff v. Prag*, 79 Md. 369, 29 Atl. 824.

(b) An assignment is valid, though it prefers certain creditors. If made with the intention to obtain some illegal advantage over the creditors, it is fraudulent, but the burden of proof is on the one assailing the assignment.—*Strauss v. Rose*, 59 Md. 525. [Cited and annotated in 30 L. R. A. 469, 474, 481, 484, on intent to defraud sustaining attachment.]

(c) A deed made by a debtor in Delaware to trustees for the benefit of creditors, in conformity with the laws of that state, but not executed, acknowledged, and recorded as required by the laws of Maryland, will transfer to the trustees a balance of the purchase price of real estate situated in Maryland, if it appears that the debtor had, prior to executing the deed, contracted to sell the estate to a third person, had received part of the price, and had given bond to convey the legal title on the payment of the balance.—*Houston v. Nowland*, 7 G. & J. 480. [Cited and annotated in 23 L. R. A. 46, on transfer of property out of state by bankruptcy, or kindred proceedings; in 24 L. R. A. 370, 380, 381, on necessity for acceptance of assignment or deed of trust for creditors.]

(d) If a deed of assignment is fair upon its face, and dedicates all the property of the grantor to the payment of his debts, the burden of proof is upon the creditor assailing such assignment to show that, although valid on its face, it is fraudulent in fact.—*Farrall v. Farnen*, 5 Atl. 622. (Not reported in the Maryland Reports.)

#### § 162. Operation and effect.

##### *Cross-References.*

Estoppel to attack assignment, see post, § 342.

Partial invalidity, see ante, § 42.

Provisions for payment of invalid or fictitious debts, see ante, § 157.

(a) A trust deed conveying all of a debtor's property to a trustee for the benefit of all the grantor's creditors, without preferences, is not prima facie fraudulent, under Code, art. 47, § 24, which provides that if

any conveyance be made of any goods by certain persons, when insolvent, the same shall be prima facie intended to delay creditors, and the burden of proving the bona fides of the transaction is on the grantor and grantee; this being aimed at conveyances hindering creditors.—*Pfaff v. Prag*, 79 Md. 369, 29 Atl. 824.

(b) An assignment is valid, though it prefers certain creditors. If made with intention to obtain some illegal advantage over the creditors, it is fraudulent, but the burden of proof is on the one assailing the assignment.—*Strauss v. Rose*, 59 Md. 525. [Cited and annotated in 30 L. R. A. 469, 474, 481, 484, on intent to defraud sustaining attachment.]

(c) A deed made by a debtor in Delaware to trustees for the benefit of creditors, in conformity with the laws of that state, but not executed, acknowledged, and recorded as required by the laws of Maryland, will transfer to the trustees a balance of the purchase price of real estate situated in Maryland, if it appears that the debtor had, prior to executing the deed, contracted to sell the estate to a third person, had received part of the price, and had given bond to convey the legal title on the payment of the balance.—*Houston v. Nowland*, 7 G. & J. 480. [Cited and annotated in 23 L. R. A. 46, on transfer of property out of state by bankruptcy or kindred proceedings; in 24 L. R. A. 370, 380, 381, on necessity for acceptance of assignment or deed of trust for creditors.]

(d) If a deed of assignment is fair upon its face, and dedicates all the property of the grantor to the payment of his debts, the burden of proof is upon the creditor assailing such assignment to show that, although valid on its face, it is fraudulent in fact.—*Farrall v. Farnen*, 5 Atl. 622. (Not reported in the Maryland Reports.)

(e) The fact that the debtor had other property sufficient to pay the creditors in reference to whom an assignment was fraudulent will not change the character of the assignment.—*Sangston v. Gaither*, 3 Md. 40.

(f) Assuming that the possession of other

property sufficient to satisfy the claims of creditors in respect to whom the assignment had been declared fraudulent would change the character of the assignment, it would be incumbent on those claiming under the assignment to show the existence of such property.—*Sangston v. Gaither*, 3 Md. 40.

#### (F) FILING, RECORDING, AND REGISTRATION.

##### *Cross-References.*

Filing bond, see post, § 205.

Assignment by principal contractor affecting subcontractor's right to mechanic's lien, see "Mechanics' Liens," § 114.

#### § 163. Necessity in general.

##### *Cross-References.*

As dependent on nature of transaction, see ante, § 9.

Neglect to record deed as affecting liability on assignee's bond, see post, § 411.

Priority of recorded mortgage taken without knowledge of assignment, see post, § 335.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 164. Foreign assignments.

##### *Cross-Reference.*

See ante, § 162.

(a) A deed of trust for the benefit of creditors, valid according to the law of Kentucky where it was made and where the debtors reside, was held to pass personal property in Maryland as against a subsequently attaching creditor, although not executed and recorded according to the law of the latter state.—*Wilson v. Carson*, 12 Md. 54. [Cited and annotated in 23 L. R. A. 35, on transfer of property out of state by bankruptcy or kindred proceedings.]

#### § 165. Statutory provisions.

##### *Cross-References.*

See ante, § 164; post, § 166.

#### § 166. Place.

##### *Cross-Reference.*

Place of filing bond for record, see post, § 201.

(a) Under Code, art. 21, §§ 47, 48, requiring a conveyance of personal property to be recorded in the county or city in which the grantor resides, where the trustee for the benefit of creditors files his bond under art. 16, § 205, at the domicile of



the grantor, where the trust deed is recorded, title to all the personal property of the grantor passes to him, though it may be situated in another county or city.—*Fidelity & Deposit Co. v. Haines*, 78 Md. 454, 28 Atl. 393, 23 L. R. A. 652.

(b) An assignment of personal property to a trustee for the benefit of creditors, executed by debtors doing business in Baltimore city, but residing in Prince George's county, passes no title to the trustee, where the deed and bond are not recorded and filed with the clerk of the court of that county, though both have been recorded with the clerk of the Superior Court of Baltimore City; and creditors attaching the property in the trustee's hands acquire a valid lien against it, which is not divested by the subsequent recording of the deed and the filing of the bond in the proper county.—*Stiefel v. Barton*, 73 Md. 408, 21 Atl. 63.

(c) Code, art. 16, § 237, requires, as a condition precedent to the vesting of title in a trustee for the benefit of creditors, that a bond shall be filed with and approved by the clerk of the court in which the deed creating the trust shall be recorded. *Held*, that the place of recording is not discretionary with the trustee, as such deeds are subject to the general registration laws of the state, Code, art. 21, § 13, requiring every deed affecting real estate to be recorded in the county or city where the land lies, and § 47 requiring every bill of sale or mortgage of personalty to be recorded in the county or city where the vendor or donor may reside.—*Stiefel v. Barton*, 73 Md. 408, 21 Atl. 63.

#### § 167. Time.

#### § 168. Sufficiency.

##### *Cross-References.*

As to property conveyed before assignment, see post, § 178.

Effect of recitals in order of discharge, see post, § 362.

Effect of filing order appointing receiver, see "Receivers," § 65.

#### § 169. Operation and effect.

#### § 170. Effect of failure to file or record.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## II. CONSTRUCTION AND OPERATION IN GENERAL.

### *Cross-References.*

Claims and liens prior or superior to assignment, see post, §§ 330-340.

Renunciation by assignee, see post, § 202.

Revocation of assignment, see ante, § 50.

Right of assignee to sue to recover assets, see post, §§ 223-230.

Who may question validity, see ante, § 47.

Admissions by assignors, see "Evidence," § 232.

Bar to dower, see "Dower," § 45.

Decisions of state courts as authority in federal courts, see "Courts," § 366.

Effect as breach of covenant against assignment of lease, see "Landlord and Tenant," § 76.

Effect as suspending running of statute of limitations, see "Limitation of Actions," §§ 102, 103, 110, 131.

Effect as terminating agency, see "Principal and Agent," § 42.

Effect as transfer of trade-name, see "Trade-Marks and Trade-Names," § 37.

Effect of assignment by mortgagee on execution of power of sale, see "Mortgages," § 340.

Insolvency of party as breach of contract, see "Contracts," § 310.

Right to replevy property in assignee's possession, see "Replevin," § 4.

### § 171. General rules of construction.

#### *Cross-References.*

Amendment of assignment, see ante, § 49.

Parties, see post, § 172.

Renunciation by assignee, see post, § 202.

Revocation of assignment, see ante, § 50.

Who may attack assignment, see ante, § 47.

(a) An agreement between the mortgagee of the debtor, and unsecured creditors of the debtor, and sureties for him, by which provision was made for the assignment and application of certain assets of the debtor to the payment of his debts, controls the whole matter, fixes the rule of distribution, and makes the law for the case.—*Hall v. Farmers' Nat. Bank*, 53 Md. 120.

(b) A deed of trust for the benefit of creditors to three trustees, providing that they, their executors, administrators, and assigns, or a majority of them, shall forthwith take possession, and sell the goods, implies that a majority of the trustees may execute the trust.—*Ratcliffe v. Sangston*, 18 Md. 383. [*Cited and annotated in 17 L. R. A. (N. S.) 1033, on right to reclaim goods procured by false representations as against buyer's assignee for creditors or trustee in bankruptcy.*]

(c) Two assignments executed within a few days of each other, and both defective, cannot be coupled together so as to make one good assignment.—*Bridges v. Hindes*, 16 Md. 101.

(d) Where a debtor transfers his estate to trustees of his own selection, for the payment of his debts in such manner as he sees fit, and prefers some creditors to others, reserving the balance to himself, without providing for all his creditors, the inference will be that he does not intend to pay them out of that property.—*Sangston v. Gaither*, 3 Md. 40.

### § 172. Parties.

(a) An agreement between the mortgagee of the debtor, and unsecured creditors of the debtor, and sureties for him, by which provision was made for the assignment and application of certain assets of the debtor to the payment of his debts, controls the whole matter, fixes the rule of distribution, and makes the law for the case.—*Hall v. Farmers' National Bank*, 53 Md. 120.

(b) Where a deed of trust is made to several trustees, and a part disclaim the trust, the others will take the legal estate, and the power to administer the trust, unless the intention that all shall act is expressed, or clearly implied from the conveyance.—*Ratcliffe v. Sangston*, 18 Md. 383.

(c) A deed of trust for the benefit of creditors to three trustees, providing that they, their executors, administrators, and assigns, or a majority of them, shall forthwith take possession, and sell the goods, implies that a majority of the trustees may execute the trust.—*Ratcliffe v. Sangston*, 18 Md. 383. [*Cited and annotated in 17 L. R. A. (N. S.) 1033, on right to reclaim goods procured by false representations as against buyer's assignee for creditors or trustee in bankruptcy.*]

### § 173. Property conveyed.

#### *Cross-Reference.*

Discovery and collection of assets by assignee, see post, §§ 224-230.

#### *Annotation.*

What does not pass.—3 L. R. A. 822, note. Transfer of property out of state.—23 L. R. A. 38; 65 L. R. A. 353, notes.

Whether cause of action for personal injuries passes to assignee.—44 L. R. A. 180, note.

### § 174.—In general.

#### *Cross-References.*

Property included in description, see post, § 175.

Trade-marks and trade-names, see "Trade-Marks and Trade-Names," § 37.

(a) An assignment of goods and all the estate of every kind and description embraces both realty and personalty, and therefore is good as an assignment of all the grantors' property.—*Farquharson v. Eichelberger*, 15 Md. 63. [*Cited and annotated in 2 L. R. A. (N. S.) 176, 179, on necessity of word "heirs" to pass fee to trustee.*]

(b) In a deed of trust conveying property to pay debts, the omission of the words "and his heirs" does not confine the grant to personalty, but when the intent to convey all the grantor's property is manifest, a fee simple in realty also passes, by implication, under the deed.—*Farquharson v. Eichelberger*, 15 Md. 63. [*Cited and annotated in 2 L. R. A. (N. S.) 176, 179, on necessity of word "heirs" to pass fee to trustee.*]

(c) A deed of trust for the benefit of creditors, and exacting releases, in the premises conveyed to two trustees, "and the survivor of them, and the executors and administrators of such survivor, all, and singular, the goods, wares, merchandise, stock in trade, chattels, property, and estate, of every kind and description, belonging to the" grantor, "to have and to hold all the said estate and property, stock in trade, chattels, and effects" unto the said trustees, "and the survivor of them, and the executors and administrators, in trust," etc. *Held*, that the deed conveyed all the estate, real and personal, of the grantor, and a fee-simple interest in his lands, if he had any, since, when the grant made by the premises is in conflict with that contained in the habendum of a deed, the limitation contained in the latter must be rejected, and the estate given in the former must prevail.—*Farquharson v. Eichelberger*, 15 Md. 63. [*Cited and annotated in 2 L. R. A. (N. S.) 176, 179, on necessity of word "heirs" to pass fee to trustee.*]

(d) Where a debtor transfers his estate to trustees of his own selection, for the payment of his debts in such manner as he sees fit, and prefers some creditors to others, re-

serving the balance to himself, without providing for all his creditors, the inference will be that he does not intend to pay them out of that property.—*Sangston v. Gaither*, 3 Md. 40.

**§ 175.—Property included in description.**

(a) General words in an assignment for benefit of creditors, purporting to transfer all the debtor's property of various specified kinds, and the "property of every name and nature whatever, of and belonging to him, and which are more particularly and fully enumerated in a schedule hereto annexed, marked," etc., held restricted by such reference to the property described in the schedule annexed, it having been formally executed and delivered as part of the deed of assignment.—*Mims v. Armstrong*, 31 Md. 87, 1 Am. Rep. 22.

(b) Where a lessee makes a general assignment of "all his property, of every sort and description," for the benefit of his creditors, it is sufficiently comprehensive to pass to the trustee the grantor's interest in the term.—*Horwitz v. Davis*, 16 Md. 313. [*Cited and annotated* in 59 L. R. A. 674, 676, 680, 681, 684, 685, on liability for rent of premises occupied by receiver or assignee for creditors.]

(c) A deed of trust for the benefit of creditors, and exacting releases, in the premises conveyed to two trustees, "and the survivor of them, and the executors and administrators of the survivor, all, and singular, the goods, wares, merchandise, stock in trade, chattels, property, and estate of every kind and description, belonging to the" grantor, "to have and to hold all the said estate and property, stock in trade, chattels, and effects" unto the said trustees, "and the survivor of them, and the executors and administrators, in trust," etc. Held, that the deed conveyed all the estate, real and personal, of the grantor, and a fee simple interest in his lands, if he had any, since, when the grant made by the premises is in conflict with that contained in the habendum of a deed, the limitation contained in the latter must be rejected, and the estate given in the former must prevail.—*Farquharson v. Eichelberger*, 15 Md. 63. [*Cited and annotated*

in 2 L. R. A. (N. S.) 176, 179, on necessity of word "heirs" to pass fee to trustee.]

(d) In a deed of trust conveying property to pay his debts, the omission of the words "and his heirs" does not confine the grant to personalty, but, when the intent to convey all the grantor's property is manifest, a fee simple interest in realty also passes, by implication, under the deed.—*Farquharson v. Eichelberger*, 15 Md. 63. [*Cited and annotated* in 2 L. R. A. (N. S.) 176, 179, on necessity of word "heirs" to pass fee to trustee.]

(e) An assignment of goods and all the estate of every kind and description embraces both realty and personalty, and therefore is good as an assignment of all the grantor's property.—*Farquharson v. Eichelberger*, 15 Md. 63. [*Cited and annotated* in 2 L. R. A. (N. S.) 176, 179, on necessity of word "heirs" to pass fee to trustee.]

**§ 176.—Assignor's title or possession.**

*Cross-References.*

Liability of assignee to assignor's vendor, see post, § 330.

Rights of purchasers at assignee's sale, see post, § 249.

Estoppel to claim trust fund, see post, § 331.

Right of priority on distribution of estate, see post, § 310.

Rights of assignees as to assignor's claim for advances, see post, § 180.

Priority of vendor's lien, see post, § 334.

Enforcement of vendor's superior claim, see post, § 340.

Intention of parties, see ante, § 171.

(a) A deed of trust for the benefit of creditors, executed by a husband and wife, recited that the grantors, being "indebted unto sundry persons and corporations in several sums of money and being unable to pay the same in full, have proposed and agreed to assign all our property \* \* \* in trust for the benefit of our creditors, as hereinafter mentioned," and directed trustees to apply the residue in payment of the several debts due to the creditors aforesaid "of us \* \* \* and without any preference or priority of payment," and, after the payment of debts, costs, etc., "then in trust to apply the surplus, if any, unto the said" grantors. Held, that they conveyed, not only the property owned by them jointly, but also the individual property of the wife.

—*Roberts v. Roberts*, 102 Md. 131, 62 Atl. 161, 1 L. R. A. (N. S.) 782, 111 Am. St. Rep. 344; *Landon v. Shriver's Estate*, Id.

(b) Plaintiffs executed to defendant's assignor a power of attorney to act for them; and the latter, having transferred certain stock of plaintiffs to himself, pledged it for his debt. He afterwards executed to defendant a deed of trust for the benefit of creditors. Defendant, as assignee, paid the debt for which the stock was pledged, and secured possession of the stock. *Held*, that the pledge by defendant's grantor constituted a breach of trust, and plaintiffs could follow the stock and enforce their claims against it in the hands of the assignee.—*Woodside v. Graffin*, 91 Md. 422, 46 Atl. 968. [*Cited and annotated* in 6 L. R. A. (N. S.) 488, on redemption from trustee's insolvent estate of trust property wrongfully pledged.]

(c) A voluntary assignment for creditors does not revoke an agreement for the purchase of goods made by the assignor prior thereto, and, when the property is delivered to and accepted by the assignee after the assignment, the title vests in him.—*McElroy v. Seery*, 61 Md. 389, 48 Am. Rep. 110.

(d) On rescission by the vendor of a sale, for fraud, he may recover from the assignee for the benefit of creditors of the vendee the property remaining unsold by the vendor, together with the fund in the vendee's hands derived from sale of the goods.—*Peters v. Hilles*, 48 Md. 506. [*Cited and annotated* in 6 L. R. A. (N. S.) 557, on lack of reasonable expectation of ability to pay as equivalent to intention not to pay.]

(e) An assignment by a fraudulent vendee to trustees for the benefit of creditors, without knowledge of the fraud, is yet made upon insufficient consideration, and is therefore void against a suit of replevin by the vendor.—*Ratcliffe v. Sangston*, 18 Md. 383. [*Cited and annotated* in 17 L. R. A. (N. S.) 1033, on right to reclaim goods procured by false representations as against buyer's assignee for creditors or trustee in bankruptcy.]

(f) An assignment of goods by a fraudulent vendee for the benefit of his creditors, in consideration of a pre-existing indebted-

ness, confers no title as against the defrauded vendor.—*Ratcliffe v. Sangston*, 18 Md. 383. [*Cited and annotated* in 17 L. R. A. (N. S.) 1033, on right to reclaim goods procured by false representations as against buyer's assignee for creditors or trustee in bankruptcy.]

(g) Where a lessee makes a general assignment of "all his property of every sort and description," for the benefit of his creditors, it is sufficiently comprehensive to pass to the trustee the grantor's interest in the term.—*Horwitz v. Davis*, 16 Md. 313. [*Cited and annotated* in 59 L. R. A. 674, 676, 680, 681, 684, 685, on liability for rent of premises occupied by receiver or assignee for creditors.]

(h) Property acquired by an insolvent debtor, subsequent to his petition, by gift, descent, or in his own right by bequest, devise, or in the course of distribution, does not pass to his trustee.—*Hall v. Gill*, 10 G. & J. 325.

#### § 177.—Assignments by firms or partners.

##### *Cross-References.*

See post, § 195.

Rights and remedies of assigning partner, see post, § 360.

(a) A deed in trust for the benefit of creditors made by the surviving partner purported to "grant, convey, and assign" to the trustees all the "property and estate, real, personal, and mixed, of whatever kind and wheresoever situate, belonging to such assignor individually, and also the 'property, estate, and assets whatsoever of the said firm,'" for the purposes therein set forth. *Held*, that as the real estate is considered as personalty for the purpose of paying the debts of the firm, and the surviving partner is charged with the duty of paying such debts, such deed conveyed the equitable title to all the property, real and personal, of both the firm and the surviving partner, subject to the provisions of the insolvent laws of the state.—*Riley v. Carter*, 76 Md. 581, 25 Atl. 667, 35 Am. St. Rep. 443, 19 L. R. A. 489. [*Cited and annotated* in 27 L. R. A. 451, as to when realty considered firm property; in 28 L. R. A. 133, on position of surviving partners in firm realty.]

(b) A conveyance from two copartners in trade of "all and singular the stock of goods, machinery, book-accounts, owing to" the grantors, "of whatsoever consisting," in trust for such creditors as shall discharge them "from all their liabilities, individual as well as copartnership," conveys all their property, separate as well as joint.—*Malcolm v. Hodges*, 8 Md. 418.

### § 178.—Property conveyed before assignment in general.

#### *Cross-References.*

Prior assignment of debt secured by mechanic's lien, see "Mechanics' Liens," § 204.

What constitutes gift by assignor to wife, see "Husband and Wife," § 49½.

(a) An assignee for the benefit of creditors acquires property subject to all the equities against the assignor, for the property is conveyed to him to pay *pre-existing* debts, and not in consideration of money paid or advanced by him; he is not a bona fide purchaser, within the meaning of Code, art. 21, § 16, providing that, where there are two or more deeds conveying the same property, the deed or deeds which shall be first recorded according to law shall be preferred, if made bona fide, and upon good and valuable consideration; and he cannot acquire a preference against a bona fide purchaser who has either paid or advanced money upon the faith of the debtor's actual title to the property transferred, though the conveyance by the debtor previously to the assignment has been recorded subsequently to the recording of the assignment.—*Tyler v. Abergh*, 65 Md. 18, 3 Atl. 904.

### § 179.—Property fraudulently conveyed.

#### *Cross-References.*

Right of assignee to avoid fraudulent conveyance, see post, § 228.

Rights and remedies of creditors after discharge of assignee, see post, § 404.

Rights and remedies of creditors in aid of assignment, see post, § 290.

Subsequent attachment of property fraudulently conveyed before assignment, see "Attachment," § 180.

### § 180.—Rights of action.

#### *Cross-Reference.*

Debts due from assignee to assigned estate, see post, §§ 224, 379.

### § 181.—Property omitted from assignment or inventory.

(a) General words in an assignment for benefit of creditors, purporting to transfer all the debtor's property of various specified kinds, and the "property of every name and nature whatever, of and belonging to him, and which are more particularly and fully enumerated in a schedule hereto annexed, marked," etc., *held* restricted by such reference to the property described in the schedule annexed; it having been formally executed and delivered as part of the deed of assignment.—*Mims v. Armstrong*, 31 Md. 87, 1 Am. Rep. 22.

(b) Where a lessee makes a general assignment of "all his property of every sort and description," for the benefit of his creditors, it is sufficiently comprehensive to pass to the trustee the grantor's interest in the term.—*Horwitz v. Davis*, 16 Md. 313. [*Cited and annotated* in 59 L. R. A. 674, 676, 680, 681, 684, 685, on liability for rent of premises occupied by receiver or assignee for creditors.]

(c) Where a deed of assignment to trustees for benefit of creditors by mistake omitted part of the land included in the debtor's schedule of assets, but possession thereof was delivered, with the rest of the property, to the trustees, equity will correct the mistake, and enforce the contract, as reformed, against all who become parties thereto, on parol proof that the deed of assignment was intended by all the parties to it to include the property covered by the schedule, and that the land in question was omitted by mistake.—*Moale v. Buchanan*, 11 G. & J. 314. [*Cited and annotated* in 3 L. R. A. (N. S.) 796, on taking possession as part performance of oral contract as to realty; in 18 L. R. A. (N. S.) 616, as to whether an extrinsic document not referred to in memorandum of sale of realty, may be resorted to in aid of defective description to satisfy statute of frauds; in 28 L. R. A. (N. S.) 877, 878, on relief from mistake of law as to effect of instrument.]

### § 182.—Exempt property.

#### *Cross-References.*

See ante, § 174.

Reservations in assignment of exempt property, see ante, § 97.

Rights and remedies of assignor, see post, § 358.

Sale, see post, § 244.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 183.— After-acquired property.

#### *Cross-Reference.*

Waiver of creditor's right to subject after-acquired property to lien of judgment, see post, § 339.

(a) Land inherited by a debtor after the execution of a deed of all of his property in trust for the payment of his debts does not thereby become a part of the trust estate, though incumbered by a mortgage as security for some of his debts; and hence a purchase thereof in good faith by one of the trustees, as assignee of the mortgage, at a sale under power conferred by the mortgage, is valid, especially where the trust estate could not have been increased or diminished by the price obtained at the sale.—*Read v. Reynolds*, 100 Md. 284, 59 Atl. 669.

### § 184. Estates or interests created, and title acquired by assignee.

#### *Cross-References.*

Equities or defenses against assignor, see post, § 185.

Set-off and counterclaim against assignee, see post, § 186.

Rights of assignee as to property fraudulently conveyed, see post, § 228.

Admissions by assignor, see "Evidence," § 232.

(a) Under a deed of trust to sell, and pay debts, the fee may pass by necessary implication without the word "heirs."—*Farquharson v. Eichelberger*, 15 Md. 63. [Cited and annotated in 2 L. R. A. (N. S.) 176, 179, on necessity of word "heirs" to pass fee to trustee.]

(b) The president, directors, and company of the Bank of Alexandria, by deed conveyed all the assets of the bank to B. in trust to assign, transfer, and convey the same "to such persons as shall hereafter be designated by a majority in number and amount of the now stockholders of said bank, or of their assigns, in trust for the payment of the creditors of said bank," etc., "and until such conveyance be made, for the payment of the debts of said bank and for

the use of its stockholders, according to the principles of equity." By a subsequent deed, reciting that it was made in compliance with a resolution of a majority of the stockholders, etc., B. conveyed all the assets of the bank to the plaintiffs in trust that they should, for the purpose of making a final settlement of its affairs, ascertain and collect its assets, sell its property, and pay its debts, etc. *Held*, that, if the plaintiffs were not trustees designated in the manner prescribed, they were still assignees under the other clause in the first deed, and as such authorized to collect the assets of the bank, and entitled to revive a judgment due the bank by scire facias.—*Barry v. Hoffman*, 6 Md. 78.

### § 185. Equities and defenses against assignor.

#### *Cross-Reference.*

Estate or interest created, and title acquired by assignee, see ante, § 184.

(a) The president, directors, and company of the Bank of Alexandria by deed conveyed all the assets of the bank to B. in trust to assign, transfer, and convey the same "to such persons as shall hereinafter be designated by a majority in number and amount of the now stockholders of said bank, or of their assigns, in trust for the payment of the creditors of said bank," etc., "and until such conveyance shall be made, for the payment of the debts of said bank and for the use of its stockholders, according to the principles of equity." By a subsequent deed, reciting that it was made in compliance with a resolution of a majority of the stockholders, etc., B. conveyed all the assets of the bank to the plaintiffs in trust that they should, for the purpose of making a final settlement of its affairs, ascertain and collect its assets, sell its property, and pay its debts, etc. *Held*, that, if the plaintiffs were not trustees designated in the manner prescribed, they were still assignees under the other clause in the first deed, and as such authorized to collect the assets of the bank, and entitled to revive a judgment due the bank by scire facias.—*Barry v. Hoffman*, 6 Md. 78.

### § 186. Set-offs and counterclaims against assignee.

#### *Cross-Reference.*

Title acquired by assignee, see ante, § 184.

(a) A debtor of an assignor for the benefit of creditors acquiring claims against the assignor after execution of the assignment may not set them off against the claim of the assignee.—*Richardson v. Anderson*, 109 Md. 641, 72 Atl. 485.

(b) A debtor of assignor for creditors, liable as accommodation indorser of a note of the assignor, not yet due, being afterwards required to pay it, may not set off the amount paid against the claim of the assignee.—*Richardson v. Anderson*, 109 Md. 641, 72 Atl. 485. [*Cited and annotated in 28 L. R. A. (N. S.) 352, on promise to pay conditional upon exercise of option by promisee, time for which had not expired at time of bankruptcy, as basis of provable claim.*]

### § 187. Time of taking effect.

#### *Cross-References.*

Effect of judgment declaring transfer to be constructive assignment, see post, § 295.

Filing bond as condition precedent to vesting property in assignee, see post, § 205.

Filing, recording, and registration as condition precedent to vesting property in assignee, see ante, §§ 163-170.

Necessity of acceptance by assignee, see ante, § 43.

Necessity of acceptance by creditors, see ante, § 44.

Necessity of delivery of assignment, see ante, § 67.

Necessity of delivery of possession to assignee, see ante, § 45.

Validity of attachment levied before notice of assignment to debtor of assignor, see post, § 193.

Validity of attachment levied on firm property after execution by one partner but before approval by the other, see post, § 193.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 188. Rights acquired by third persons.

#### *Cross-References.*

See post, § 196.

Power of assignor to give mortgage after assignment, see post, § 357.

Laws impairing obligation of contracts, see "Constitutional Law," § 161.

(a) A., being indebted to divers persons in a considerable amount, conveyed his real and personal estate to trustees, and the survivor of them, and the survivor's heirs, in trust to sell, convey, and dispose of all or any portion of the property conveyed, either at private or public sale, for cash or credit, as might seem best to the trustees, and on further trust to pay all the debts of the grantor from the proceeds, and to hold the balance for the grantor's benefit during his life; the property at his death to go in such direction as he might by his last will indicate, and in default of will to his representatives. *Held*, that the deed gave the trustees power to sell and convey all the real estate to grantees, in consideration of their assuming to pay the debts specified, and that such conveyance, in the absence of fraud, would be valid, as between the original grantor and his representatives, and the grantees of the trustees.—*Funk v. Newcomer*, 10 Md. 801. [*Cited and annotated in 22 L. R. A. 257, on estoppel by allowing record title to remain in another.*]

### § 189. Effect on pending actions.

### § 190. Proceedings against assignor in disregard of assignment.

#### *Cross-Reference.*

Right as between receiver and assignee for benefit of creditors, see "Receivers," § 77.

### § 191.—Actions and recovery therein in general.

#### *Cross-References.*

See post, § 196.

Actions to set aside assignment, see post, §§ 341-356.

Estoppel to claim under assignment, see post, § 297.

(a) The lien of a judgment against an assignor obtained after the trustee took possession under the deed of trust is subsequent to that of creditors under the deed.—*Moale v. Buchanan*, 11 G. & J. 314.

### § 192.—Property assigned as in custody of the law.

#### *Cross-References.*

See post, § 346.

Property conveyed by assignment, see ante, §§ 174-183.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 193.— Attachment or garnishment.****Cross-References.**

See post, § 342.

As remedy on ground of nullity, see post, § 343.

Attachment of exempt property, see post, § 358.

Attachment or garnishment lien prior to assignment, see post, § 336.

Effect of invalidity in general, see ante, §§ 1-170.

Effect of notice to and acceptance by creditors, see ante, § 44.

Foreign assignments and extraterritorial effect of assignments, see post, § 199.

Marshaling and surrender of assets to receiver, see post, § 311.

Pleading assignment, see post, § 277.

Remedy of assignee against attachment by intervention or motion, see post, § 276.

Right of assignee to defend for creditors, see post, § 216.

Validity of attachment as against unrecorded assignment, see ante, § 163.

Validity of unaccepted trust, see ante, § 43.

Fraudulent transfer as ground of attachment, see "Attachment," § 43.

(a) The jurisdiction assumed by a court of equity upon the application of a trustee under a voluntary assignment for the benefit of creditors is not an exclusive jurisdiction, and does not interfere with the right of a creditor to proceed, by attachment or otherwise, against the property or funds in the hands of the trustee, for the purpose of testing in a court of law the bona fides of the assignment.—*National Park Bank v. Lanahan*, 60 Md. 477. [Cited and annotated in 26 L. R. A. 595, on right to attach property in hands of assignee for creditors.]

(b) The plaintiff deposited money with a bank in the usual way. On the same day the bank failed, and made an assignment of its property for the benefit of its creditors. The plaintiff sued out an attachment, based on an allegation of fraud in the grantor of the deed of trust. The trustee appeared as garnishee and claimant, and defended. *Held*, that the plaintiff was in no better position than an ordinary creditor, and was not entitled to judgment.—*Horwitz v. Ellinger*, 31 Md. 492.

(c) N., by a sealed instrument, appointed K. his attorney, with power to collect and compromise debts due to him, the collections to be accounted for to N., and, after deduction of a commission for services, "to make

as just and satisfactory dividend thereof to my creditors as he can, and settlement with them." K. gave notice, through a newspaper, to creditors to file their claims preparatory to a dividend, and part of them did so. *Held*, that even if the instrument could be held to be a sufficient assignment, still, as it did not absolutely and under all circumstances devote the property to the payment of the assignor's debts, and as there was no evidence or presumption of the creditors' assent thereto, it was not valid as against attachment by a creditor by process of garnishment.—*Kalkman v. McElderry*, 16 Md. 56. [Cited and annotated in 24 L. R. A. 370, on necessity for acceptance of assignment or deed of trust for creditors.]

(d) Judgment having been rendered prior to 1839 against B. and his sureties, they in that year conveyed their property in trust, to be sold for the payment of judgments of other creditors according to their legal priorities. The trustees sold a part of the estate to plaintiff, the purchase money being applied to the discharge of elder judgments, which were thereupon assigned to the purchaser; a full and fair value having been paid for the land. In 1844 defendants revived, by scire facias, certain judgments recovered by them in 1838, against B. and others, which were junior to the judgments paid off by the plaintiff. Plaintiff, who was a nonresident, was not summoned under the scire facias, and defendants proceeded to sell the land on the lien of their judgments. *Held*, that defendants, not having assented to or participated in the formation of the trust created by B. and his sureties, and not having ratified the same, are not bound by its terms.—*Barnes v. Dodge*, 7 Gill 109.

(e) The lien of a judgment against an assignor obtained after the trustee took possession under the deed of trust is subsequent to that of creditors under the deed.—*Moale v. Buchanan*, 11 G. & J. 314.

**§ 194.— Execution and proceedings thereon.****Cross-References.**

Execution lien prior or superior to assignment, see post, § 337.

Property in custodia legis, see ante, § 192.

(a) Where a writ of sequestration was



laid in the hands of a party, and he answered, denying that the property in his hands belonged to defendant, and set up an assignment thereof to himself in trust for creditors, it would be irregular to pronounce judgment upon the validity of the assignment under the sequestration proceedings.—*Keighler v. Nicholson*, 4 Md. Ch. 86.

**§ 195. Debts included.**

**§ 196. Debts preferred and order of payment.**

**§ 197. Termination of trust.**

**Cross-References.**

Accounting, settlement, and discharge of assignee, see post, §§ 364-406.

Discontinuance of proceedings under assignment, see post, § 283.

Renunciation of trust by assignee, see post, § 202.

Reversion of property to assignor on termination of trust, see post, § 363.

Revocation of assignment, see ante, § 50.

Setting aside assignment, see post, §§ 341-356.

(a) A provision in a trust deed for the benefit of creditors that the trust should be closed within two years from the date of the deed was directory only, and not mandatory.—*Shirk v. Trundle*, 96 Md. 177, 53 Atl. 928; *Sneeringer v. Same*, Id.

(b) Where a trust deed provided that the trust should be closed within two years from the date of the deed, but contained no provision for the care of the trust property if the trust was not closed within the time, the limitation contained in the deed cannot be construed as a termination of the trust at the expiration of the time limited.—*Shirk v. Trundle*, 96 Md. 177, 53 Atl. 928; *Sneeringer v. Same*, Id.

**§ 198. Rights of creditors as to surplus or property left in hands of debtor.**

(a) Where a fund remains in court after an order distributing it, a creditor whose claim has been overlooked or omitted, if he has not been guilty of laches, will always, upon the institution of proper proceedings, be allowed to participate in the distribution.—*Price v. Merchants' Bank*, 29 Md. 369.

(b) A deed of trust provided for the full payment of such creditors named in an annexed schedule as assent and release within

a fixed time, "if the fund be sufficient for that purpose, and the balance, if any," to one of the grantors and his representatives, "but ratably and proportionably according to the amount of the claims of each of said creditors, if the fund be insufficient to pay the whole," and that the shares of the non-assenting creditors "shall not be distributed among the others," but shall be held by the trustee, "subject to the future order and control of" the said grantor. *Held*, that, the fund not proving sufficient to pay the assenting creditors in full, they can only receive dividends in the proportion that their claims bear to the whole amount specified in the schedule, and the surplus, arising from the shares of the creditors who refused to comply with the conditions of the deed, must be paid to the grantor, and not to the nonassenting creditors.—*Hollins v. Mayer*, 3 Md. Ch. 343.

(c) The nonassenting creditors cannot claim the surplus, because they would then receive the same benefit under the deed as the assenting creditors, without complying with its terms, which would destroy a material stipulation of the deed, and defeat one of the principal inducements to its execution.—*Hollins v. Mayer*, 3 Md. Ch. 343.

**§ 199. Foreign assignments and extra-territorial effect of assignments.**

**Cross-References.**

Actions by foreign assignees, see post, § 269.

Effect of assignment valid in one state but invalid in another, see ante, §§ 19-21.

Jurisdiction over foreign assignment, see post, § 218.

Registration of foreign assignments, see ante, § 164.

Extraterritorial effect of insolvency proceedings, see "Insolvency," § 57.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**III. APPOINTMENT, QUALIFICATION, AND TENURE OF ASSIGNEE OR TRUSTEE.**

**Cross-References.**

Collateral attack on order of appointment, see post, § 273.

Effect of appointment as releasing appointee from debts due estate, see post, § 224.

Representatives of deceased assignee, see post, § 266.

Rights and powers of assignee before qualification, see post, § 219.

Jurisdiction of appeal from order of appointment, see "Courts," § 247.

Law requiring assignee to be resident of state as abridging privileges and immunities of citizens, see "Constitutional Law," §§ 206, 207.

## § 200. Selection in general.

## § 201. Competency.

### Cross-References.

Collateral attack on incorporation of an assignee, see "Corporations," § 29.

## § 202. Acceptance or renunciation.

### Cross-References.

Enforcement of trust by creditors of assignor, see post, § 293.

Failure to qualify or act, see post, § 209.

Validity of unaccepted trust, see ante, § 43.

(a) A deed of trust for the benefit of creditors to three trustees, providing that their executors, administrators, and assigns, or a majority of them, shall forthwith take possession, and sell the goods, implies that a majority of the trustees may execute the trust.—*Ratcliffe v. Sangston*, 18 Md. 383. [Cited and annotated in 17 L. R. A. (N. S.) 1033, on right to reclaim goods procured by false representations as against buyer's assignee for creditors or trustee in bankruptcy.]

## § 203. Oath.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 204. Bond.

### Cross-References.

Liabilities on bonds, see post, §§ 407-415.

## § 205.—Necessity.

### Cross-References.

Delivery of possession to assignee before filing bond or inventory, see ante, § 45.

Effect of levy of attachment before filing bond, see post, § 336.

Estoppel to attack assignment, see post, § 342.

Liability of assignee as garnishee before giving bond, see ante, § 193.

Rights and powers of assignee before giving bond, see post, § 219.

(a) Code, art. 16, § 237, requires every trustee for the benefit of creditors to file a bond, and provides that, until such bond is approved, no title shall pass to the trustee.

*Held*, that, it not being necessary to record an assignment by a foreign corporation for creditors of Maryland in order that personality there may pass, the fact that it was so recorded did not render it necessary for the trustee to file a bond in that state.—*Moore v. Land Title & Trust Co.*, 82 Md. 288, 33 Atl. 641. [Cited and annotated in 65 L. R. A. 357, 359, on transfer of property out of state by bankruptcy or insolvency proceedings or assignment for creditors.]

(b) Under Code, art. 16, § 237, requiring a trustee for the benefit of creditors to file a bond, and providing that "no title shall pass" to such trustee "until such bond shall be filed," the property is subject to attachment by creditors of the assignor until such bond is filed.—*White v. Pittsburg Nat. Bank*, 80 Md. 1, 30 Atl. 567.

(c) Act 1845, c. 166 (see Code, art. 16, § 237), requiring trustees to whom any property shall be conveyed for the benefit of creditors, to file with the clerk of the court where the deed creating the trust is recorded a bond conditioned for the faithful performance of the trust, is confined in its operation to deeds executed since that act took effect.—*Walgamot v. Davis*, 6 Gill 483.

(d) An insolvent bank transferred all its effects to a certain person in trust for the benefit of creditors, and, by reason of the difficult and complicated nature of the trust, a public meeting of creditors was called, where it was determined to add two other trustees; and the original trustee, together with the bank, agreed that the two other trustees recommended by the creditors should receive the property from such original trustee and the bank upon the original trusts. *Held*, that on a showing that the whole transaction was in good faith, and openly made, a court of equity would not require the trustees to give bonds.—*Bank of Maryland v. Ruff*, 7 G. & J. 448.

## § 206.—Sufficiency.

### Cross-References.

See ante, § 172.

Effect of alteration of instrument, see "Alteration of Instruments," § 24.

(a) Code, art. 16, § 237, requiring a trustee for benefit of creditors to give a bond, with "sureties," to be approved by the clerk,

is complied with when a company, which is authorized by its charter granted by the legislature to become "sole surety" in all cases where by law two or more sureties are required, is approved as surety by the proper officer.—*Miller v. Matthews*, 87 Md. 464, 40 Atl. 176. [Cited and annotated in 40 L. R. A. 589, on powers and privileges of surety and trust companies.]

### § 207.—Approval.

### § 208.—Filing.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 209. Failure to qualify or act.

#### Cross-References.

Acceptance or renunciation, see ante, § 202.

Rights and powers of assignee before qualification, see post, § 219.

Appealability of order of appointment made in vacation, see "Appeal and Error," § 131.

(a) The mere fact that, for two weeks after a deed of trust was filed for record, the trustees in insolvency failed to give a bond, did not imply that the assignor intended, with the aid of the trustees, to so dispose of the property as to defraud his creditors, so as to sustain an attachment.—*Palmer v. Hughes*, 84 Md. 652, 36 Atl. 431.

### § 210. Resignation.

### § 211. Disqualification.

### § 212. Removal.

#### Cross-References.

See ante, § 166.

Disqualification, see ante, § 211.

Effect of bankruptcy of assignor, see "Bankruptcy," § 209.

(a) A bill averring that property assigned by a debtor for the benefit of his creditors had been placed in the care of a notoriously dishonest person, and that, by the refusal of defendants and the custodian of the goods to make an inventory of them, the creditors, in case of loss, would be deprived of proof of its extent, is sufficient to justify an injunction and the appointment of a receiver.—*Rosenberg v. Moore*, 11 Md. 376.

### § 213. Death.

#### Cross-Reference.

Representatives of deceased assignees or trustees, see post, § 266.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 214. Appointment of successor or receiver.

#### Cross-References.

Administration of estate by successive trustees, see post, § 265.

On death, see ante, § 213.

On failure to qualify or act, see ante, § 209.

On renunciation of trust, see ante, § 202.

Receivers in actions in aid of assignment, see post, § 295.

Right of removed assignee to contest appointment of successor, see ante, § 212.

Right to property rejected as valueless, see ante, § 198.

(a) Where a bank in insolvent circumstances transferred its effects to a single trustee, for the equal benefit of all its creditors, and afterwards, by a valid deed, additional trustees were associated in the trust, in good faith, and openly, and with the advice and consent of a large number of its creditors, without being required to give bond, and there was no evidence of mismanagement or neglect of the trust, or that the trustees had done anything to forfeit the confidence reposed in them, nor of any unfavorable change in their circumstances since their appointment, and no cause appeared to apprehend any, the court of chancery refused to interpose by the appointment of receivers or otherwise.—*Bank of Maryland v. Ruff*, 7 G. & J. 448.

## IV. ADMINISTRATION OF ASSIGNED ESTATE.

#### Cross-References.

Presentation, proof, and payment of claims, see post, §§ 296-329.

Provisions in assignments as to administration of estate, see ante, §§ 36, 154.

Rights and remedies of assignor, see post, §§ 357-363.

Rights and remedies of creditors, see post, §§ 284-356.

Limitation of actions, see "Limitation of Actions," §§ 28, 37, 57, 60, 102, 103, 110, 131, 155.

Right of assignee of mortgagee to purchase at sale under power in mortgage, see "Mortgages," § 362.

### § 215. Representation of debtor by assignee.

#### Cross-References.

Estate or interest created, and title acquired by assignee, see ante, § 184.

Right of contractor's assignee as to money retained by owner to pay off liens, see "Mechanics' Liens," § 312.

Right to plead statute of frauds, see "Frauds, Statute of," § 143.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 216. Representation of creditors by assignee.

(a) A trustee for the benefit of creditors so far represents their rights as to enable him to contest for their benefit the claim of a mortgagee under a defective mortgage to a preference in the distribution of the proceeds.—Sixth Ward Bldg. Ass'n No. 5 v. Willson, 41 Md. 506.

### § 217. Relation of assignee to assignment.

#### *Cross-Reference.*

Individual interest of assignee in transaction, see post, § 258.

### § 218. Jurisdiction of courts.

#### *Cross-References.*

Loss of jurisdiction, see post, § 244.

Of actions, see post, § 274.

Of actions to set aside assignment, see post, § 346.

Of contempt proceedings against assignee to enforce payment of claims, see post, § 324.

Of examination of debtor, see post, § 286.

Of proceedings for accounting, see post, § 370.

Power to remove assignee or trustee, see ante, § 212.

Property assigned as in custody of the law, see ante, § 192.

To determine right to statutory preference, see post, § 308.

To discontinue proceedings, see post, § 283.

To review judgment in actions in aid of assignment, see post, § 295.

To set aside sale of assets, see post, § 250.

Concurrent and conflicting jurisdiction of state courts, see "Courts," § 475.

Conflicting jurisdiction of courts of bankruptcy and state courts, see "Bankruptcy," § 20.

Objections to jurisdiction on application for writ of prohibition, see "Prohibition," § 28.

Of appeals from orders, see "Courts," § 219.

Waiver of objections to jurisdiction, see "Courts," § 37.

### § 219. Rights and powers of assignee before qualification.

#### *Cross-References.*

Delivery of possession to assignee before filing bond or inventory, see ante, § 45.

Qualification and effect of failure to qualify in general, see ante, §§ 204-209.

### § 220. Authority of assignee in general.

#### *Cross-Reference.*

Improper payment of claims, see post, § 323.

#### *Annotation.*

Right of assignee for creditors to compromise claims.—23 L. R. A. 578, note.

Power to accept notice of protest.—61 L. R. A. 900, note.

Duty or power of assignee as to fraudulent transfers.—5 L. R. A. 140, note.

Liability for rent of premises occupied by receiver or assignee for creditors.—59 L. R. A. 673, note.

Right of assignee for creditors to question validity of attachment.—35 L. R. A. 776, note.

Right of assignee to have judgment against assignor set aside.—54 L. R. A. 762, note.

### § 221. Instructions of court.

#### *Cross-Reference.*

As to contest of claims, see post, § 306.

### § 222. Delegation of powers of assignee.

### § 223. Discovery and collection of assets.

#### *Cross-References.*

Property conveyed by assignment, see ante, §§ 173-183.

Rights and remedies of creditors in aid of assignment, see post, § 289.

### § 224.— In general.

#### *Cross-References.*

Effect of abandonment of assets, see ante, § 198.

Examination of debtor, see post, § 286.

Nature and form of action by assignee, see post, § 268.

Examination of debtor's attorney as witness, see "Witnesses," § 200.

### § 225.— Right of assignee to possession.

#### *Cross-Reference.*

Delivery of possession on execution assignment, see ante, § 45.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 226.— (Omitted from the classification used herein.)

### § 227.— Collection and protection of assets.

#### *Cross-References.*

Nature and form of action, see post, § 268.

Remedy of assignee against attachment or other process by intervention or motion, see post, § 276.

(a) The president, directors, and company

of the Bank of Alexandria by deed conveyed all the assets of the bank to B., in trust to assign, transfer, and convey the same "to such persons as shall hereafter be designated by a majority in number and amount of the now stockholders of said bank, or of their assigns, in trust for the payment of the creditors of said bank," etc., "and until such conveyance be made, for the payment of the debts of said bank, and for the use of its stockholders, according to the principles of equity." By a subsequent deed, reciting that it was made in compliance with a resolution of a majority of the stockholders, etc., B. conveyed all the assets of the bank to the plaintiffs, in trust that they should, for the purpose of making a final settlement of its affairs, ascertain and collect its assets, sell its property, and pay its debts, etc. *Held*, that the plaintiffs were authorized to collect the assets of the bank, and entitled to revive a judgment due the bank by *scire facias*.—*Barry v. Hoffman*, 6 Md. 78.

**§ 228.—Rights of assignee as to property fraudulently conveyed.**

*Cross-References.*

Rights and powers before qualification, see ante, § 219.

Rights and remedies of creditors in aid of assignment, see post, § 290.

Rights of creditors after discharge of assignee, see post, § 404.

Title of assignee to property fraudulently conveyed, see ante, § 179.

(a) An assignee for the benefit of creditors cannot sue to set aside a conveyance made by the assignor to defraud a creditor, since the assignee succeeds to the assignor's rights, and is estopped to assert his fraud.—*Brown v. Deford*, 83 Md. 297, 84 Atl. 788; *Farmers' & Mechanics' Nat. Bank v. Same*, *Id.*

**§ 229.—Rights of assignee as to property illegally reserved.**

**§ 230.—Rights of assignee as to illegal preferences.**

*Cross-Reference.*

Rights and remedies of creditors as to illegal preferences, see post, § 291.

(a) The title to property or claims transferred or conveyed to a favored creditor contrary to the provisions of the insolvent system is by the act of 1812, c. 77, expressly vested in the trustee of the insolvent; and

he alone is competent to sue for its recovery, for the benefit of the creditors generally.—*Powles v. Dilley*, 2 Md. Ch. 119. (For present law, see Code, art. 47, §§ 8, 14.) [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

**§ 231. Custody and management of estate.**

**§ 232.—In general.**

**§ 233.—**(Omitted from the classification used herein.)

**§ 234.—Performance of assignor's obligations.**

*Cross-Reference.*

Evidence, see post, § 278.

**§ 235.—Acceptance of lease by assignee.**

*Cross-References.*

Priority of landlord's lien, see post, § 334.

Remedy against assignee to enforce liability for rent, see post, § 271.

Rent as provable claim, see post, § 298.

(a) An assignment of all of lessee's property for benefit of creditors does not make the assignee necessarily an assignee of the lease, and liable for the rent, but the assignee has his election in that respect.—*Horwitz v. Davis*, 16 Md. 313. [Cited and annotated in 59 L. R. A. 674, 676, 680, 681, 684, 685, on liability for rent of premises occupied by receiver or assignee for creditors.]

(b) If a lessee's assignee for the benefit of creditors does not accept the lease, he is not liable for use and occupation.—*Horwitz v. Davis*, 16 Md. 313. [Cited and annotated in 59 L. R. A. 674, 676, 680, 681, 684, 685, on liability for rent of premises occupied by receiver or assignee for creditors.]

(c) If a trustee in insolvency, among the assets of which estate there is a lease, goes actually on the premises and occupies them under the assignment, he becomes liable to an action for use and occupation; and if he enters upon and takes possession of the premises, and uses them for the purpose of selling the goods assigned, it is such an entry and acceptance of an assignment of the term as will make him liable for the rent as assignee of the lease.—*Horwitz v. Davis*, 16 Md. 313. [Cited and annotated in 59 L. R. A. 674, 676, 680, 681, 684, 685, on liability

for rent of premises occupied by receiver or assignee for creditors.]

**§ 236.—Continuance of assignor's business.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 237. Partnership and individual estates.**

*Cross-Reference.*

Property conveyed by assignment, see ante, § 177.

**§ 238. Sale or other disposition of assets.**

**§ 239.—In general.**

*Cross-References.*

Fraud of assignee, see post, § 252.

Provisions in assignment as to sales, see ante, § 86.

(a) An assignment for the benefit of creditors by a tenant in common does not authorize the trustees to institute proceedings against the co-tenants for the sale of the entire estate for the purpose of a partition, under Code, art. 16, § 137.—*Ritchie v. Munder*, 49 Md. 10.

**§ 240.—Authority of assignee.**

*Cross-References.*

Authority of successor, see post, § 265.

Ratification of unauthorized acts, see post, § 264.

**§ 241.—Order of court.**

*Cross-Reference.*

Parties to action for sale, see post, § 275.

**§ 242.—Notice of sale.**

**§ 243.—Manner and terms.**

*Cross-Reference.*

Sale as unincumbered by dower rights of wife, see "Dower," § 45.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 244.—Validity.**

*Cross-References.*

Fraud of assignee, see post, § 259.

Ratification of unauthorized acts, see post, § 264.

Transfers void as to creditors, see "Fraudulent Conveyances," §§ 40, 104, 286.

(a) Where a deed conveying property in trust for the benefit of creditors provided that the trust should cease on the expiration of two years from the date of the deed, a

sale made by the trustees within the time limited was not invalidated by the fact that the price was not paid or the deeds executed until after the time had expired.—*Shirk v. Trundle*, 96 Md. 177, 53 Atl. 928; *Sneeringer v. Same*, *Ibid*.

(b) The fact that a sale of trust property took place on the day of the general state election does not, of itself, constitute a sufficient ground for setting it aside.—*Bank of Commerce v. Lanahan*, 45 Md. 396.

**§ 245.—Purchase by assignee.**

**§ 246.—Conveyance and delivery.**

**§ 247.—Payment or recovery of purchase money.**

*Cross-References.*

See ante, § 174.

Medium of payment, see "Payment," § 9.

**§ 248.—Application of proceeds.**

*Cross-References.*

See ante, § 174.

See post, § 310.

Interest on lien claims, see post, § 317.

**§ 249.—Rights of Purchasers.**

*Cross-References.*

See ante, § 176.

On sale by assignee's successor, see post, § 265.

As against debtor's trustee in bankruptcy, see "Bankruptcy," § 172.

Effect of sale as equitable assignment of judgment, see "Judgment," § 843.

Enforcement of contract to purchase, see "Specific Performance," § 95.

Purchaser from fraudulent assignee, see "Fraudulent Conveyances," § 200.

Transfers void as to creditors, see "Fraudulent Conveyances," §§ 40, 104, 286.

(a) The good will and trade-marks of the business of an insolvent manufacturing corporation pass to its assignee under a deed assigning "all its estate and property, of whatever kind and wherever situated," and are acquired by the purchaser of the entire establishment at an assignee's sale, advertised as a sale of the "cotton duck mills well known as the 'Druid Mills,' in full operation, with the machinery for manufacturing all kinds of cotton duck, awnings, etc., all the well-known Druid Mills brand."—*Wilmer v. Thomas*, 74 Md. 485, 22 Atl. 403, 13 L. R. A. 380. [Cited and annotated in 46 L. R. A. 542, 543, 544, on transfer of trade-mark by bankruptcy or insolvency assignment; in 1 L. R. A. (N. S.) 711, 716, on

sale of trade-mark; in 5 L. R. A. (N. S.) 1078, on implied passing of good will with business.]

### § 250.—Setting aside.

#### *Cross-References.*

Limitation of actions to set aside sale on mortgage foreclosure, see "Limitation of Actions," §§ 39, 44.

Pleading fraud, see "Fraudulent Conveyances," § 263.

(a) Where trustees for the benefit of creditors reported that a sale of real estate had been advertised for more than three successive weeks before the day of sale, and another witness testified to the same effect, an objection that the property was not so advertised, as shown by symbols placed at the end of the advertisement by the printer, was not sustainable.—*Shirk v. Trundle*, 96 Md. 177, 53 Atl. 928; *Sneeringer v. Same*, *Ibid*.

(b) Evidence held not to justify the vacation of a sale of land by trustees for the benefit of creditors on the ground that the price paid was grossly inadequate.—*Shirk v. Trundle*, 96 Md. 177, 53 Atl. 928; *Sneeringer v. Same*, *Ibid*.

(c) A purchaser of land from a trustee for the benefit of creditors cannot complain of the ratification of the sale because of the existence of mortgage and judgment liens, when the holders thereof have filed their claims to be paid out of the proceeds, and such proceeds are more than sufficient to pay the same.—*Fox v. Roberts*, 74 Md. xi, unreported, 21 Atl. 705.

### § 251.—Redemption.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 252. Contracts, investments, and expenditures.

### § 253.—Contracts by assignee in general.

#### *Cross-References.*

Acceptance of lease by assignee, see ante, § 235.

Authority of assignee to bind himself by stipulation, see ante, § 220.

Contract with assignor, see post, § 358.

Ratification of unauthorized acts, see post, § 264.

### § 254.—Investments and deposits.

#### *Cross-Reference.*

Interest, see post, § 255.

### § 255.—Interest on funds of estate.

#### *Cross-References.*

Charges for interest in account of assignee, see post, § 382.

Investments and deposits, see ante, § 254.

### § 256.—Expenditures in general.

#### *Cross-References.*

Credits for expenditures in account of assignee, see post, §§ 386, 387.

Improper payment of claims, see post, § 323.

In performance of assignor's obligations, see ante, § 234.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 257.—Payment of taxes.

#### *Cross-References.*

As to rights of mortgagee, see post, § 310.

Liability of assignee or purchaser of assets, see ante, § 249.

Taxes as preferred claims, see post, § 308.

Notice to redeem, see "Taxation," § 701.

Taxation of property in hands of assignee, see "Taxation," § 87.

Taxes on realty as claim against personalty, see "Taxation," § 624.

(a) Under the statute making the holder of a leasehold liable for the taxes on the leased premises, and Code, art. 81, § 49, making taxes liens on the tax debtor's realty, but not making them liens on his personalty, and § 68, providing that, when a sale of realty or personalty is made by any ministerial officer, only such taxes as have accrued against the particular property sold shall be prior claims on the proceeds,—a trustee for the creditors of a lessee, who refused to take possession of the leased premises, because they would not benefit the trust estate, cannot be required to pay the taxes on such premises out of funds realized from sales of property not forming part of the leasehold.—*Parlett v. Dugan*, 85 Md. 407, 37 Atl. 36. [Cited and annotated in 1 L. R. A. (N. S.) 255, on preference of claims of state over other creditors.]

### § 258. Individual interest of assignee in transactions.

#### *Cross-References.*

Purchase of after-acquired property, see ante, § 183.

Validity of assignee's purchase of assets, see ante, § 245.

**§ 259. Fraud of assignee.***Cross-Reference.*

Removal for misconduct, see ante, § 212.

**§ 260. Waste, conversion, or embezzlement by assignee.***Cross-Reference.*

Indictment for embezzlement, see "Embezzlement," § 30.

**§ 261. Loss of property.***Cross-References.*

Depreciation of losses caused by continuance of assignor's business, see ante, § 236.

Liability on accounting, see post, § 381.

Losses by investments, see ante, § 254.

**§ 262. Torts of assignee.****§ 263. Reimbursement and indemnity to and lien of assignee.***Cross-References.*

Credits for disbursements in account of assignee, see post, §§ 285-388.

Liability of creditors to refund dividends, see post, § 328.

Subrogation to rights of creditors, see "Subrogation," § 10.

**§ 264. Ratification of unauthorized acts.***Cross-References.*

Agency of assignor for assignee, see "Principal and Agent," § 171.

Contracts by assignee in general, see ante, § 253.

Validity of sale, see ante, § 244.

**§ 265. Successive assignees or trustees.***Cross-Reference.*

Appointment of successor or receiver, see ante, § 214.

**§ 266. Representatives of deceased assignees or trustees.****§ 267. Actions.***Cross-Reference.*

To set aside sale, see ante, § 250.

**§ 268.— By assignees in general.***Cross-References.*

Against assignees, see post, § 271.

Authority of assignee to bind himself by stipulation, see ante, § 220.

Entering judgment by confession, see post, § 360.

Estates or interests created by, and title acquired under, assignment, see ante, § 184.

Necessity of qualification, see ante, §§ 199-211.

Right of assignee of partnership, see ante, § 237.

Rights of action passing by assignment, see ante, § 180.

Right to sue before qualification, see ante, § 219.

Right to sue for collection and protection of assets, see ante, § 227.

Right to sue to recover unlawful preferences, see ante, § 230.

Right to sue to set aside fraudulent conveyances by assignor, see ante, § 228.

Right to enforce contract of sale, see "Specific Performance," § 95.

Right to recover money as paid to creditors under mistake, see "Payment," § 85.

*Annotation.*

Assignee for creditors as real party in interest by whom action must be brought.—64 L. R. A. 610, note.

Right of assignee to sue in other state.—23 L. R. A. 42, note.

Right of assignee for creditors to maintain partition.—20 L. R. A. (N. S.) 105, note.

Injunction in favor of assignee for creditors to prevent execution sale.—30 L. R. A. 124, note.

Collection of notes by assignee of creditors of mutual fire insurance company.—32 L. R. A. 486, note.

Right of assignee to recover statutory added liability of corporate shareholder.—31 L. R. A. (N. S.) 365, note.

Right of assignee to enforce stockholder's liability outside state of incorporation.—33 L. R. A. (N. S.) 897, note.

**§ 269.— By foreign assignees.***Cross-Reference.*

Averment of assignment, see post, § 277.

**§ 270.— Conditions precedent to actions by assignees.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 271.— Against assignees in general.***Cross-References.*

Accounting by assignee, see post, §§ 364-406.

Actions on official bond, see post, § 415.

By assignees, see ante, § 268.

Enforcement of claims or liens superior to assignment, see post, § 340.

Enforcement of trust created by assignment, see post, § 293.

Proceedings to enforce payment of claim, see post, §§ 324, 325.

Proceedings to remove assignee, see ante, § 212.

Rights and remedies of assignor as against assignee, see post, § 359.

Setting aside assignment, see post, §§ 341-356.

Effect of suit as *lis pendens*, see "Lis Pendens," § 3.

Replevin for property in assignee's possession, see "Replevin," § 4.

(a) A trustee claiming under a fraudulent assignment has no right to the interposition of a court of equity for the purpose of pre-



venting a multiplicity of suits by persons prosecuting their rights against such assignment.—*National Park Bank v. Lananhan*, 60 Md. 477. [*Cited and annotated in 26 L. R. A. 595, on right to attach property in hands of assignee for creditors.*]

#### § 272.—Leave of court to sue assignees.

#### § 273.—Defenses.

##### *Cross-References.*

Counterclaim against assignee for rent, see ante, § 235.

Set-offs and counterclaims against assignee, see ante, § 186.

Computation of period of limitation, see

"Limitation of Actions," §§ 57, 60, 102.

Laches as defense to action by assignee of corporation, see "Corporations," § 550.

Limitations applicable, see "Limitation of Actions," §§ 28, 37.

#### § 274.—Jurisdiction and venue.

##### *Cross-References.*

Jurisdiction of actions to set aside assignment, see post, § 346.

Jurisdiction of administration of estate, see ante, § 218.

Jurisdiction of proceedings for accounting, see post, § 370.

Priority of jurisdiction, see "Courts," § 475.

Venue in general, see "Venue," § 10.

Waiver of objections to jurisdiction, see "Courts," § 37.

#### § 275.—Parties.

##### *Cross-References.*

Joinder or intervention, see post, § 276.

Right of assignee to defend for creditors, see ante, § 216.

To actions to set aside assignment, see post, § 348.

To proceedings for enforcement of claims or liens prior or superior to assignment, see post, § 340.

(a) Where a voluntary deed of trust is executed pendente lite, the assignees under these circumstances are subject to all the equities of the assignor, and cannot be admitted as parties; otherwise the litigation might be rendered interminable, by successive assignments.—*Stockett v. Goodman*, 47 Md. 54.

#### § 276.—Joinder or intervention in actions by assignor or others.

##### *Cross-References.*

See ante, § 186.

Parties in general, see ante, § 275.

Joinder of trustee for creditors in suit to foreclose mortgage, see "Mortgages," § 432.

(a) Where the property of the assignor has been attached, the trustee may intervene, and move to quash the attachment.—*Palmer v. Hughes*, 84 Md. 652, 36 Atl. 431.

(b) The rights of a voluntary assignee (where the deed of trust is made pendente lite) being in subjection to those of his assignor, the former is not entitled to become a party to a suit begun before the assignment against the assignor to foreclose a mortgage given by the latter.—*Stockett v. Goodman*, 47 Md. 54.

#### § 277.—Pleading.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 278.—Evidence.

##### *Cross-References.*

See post, § 280.

Evidence to establish assignment, or as to validity thereof, see ante, §§ 51, 86, 138, 161.

On contest of claim before assignee, see post, § 307.

Competency and credibility of witnesses, see "Witnesses," §§ 177, 379.

(a) In an action by the trustee for creditors of an insolvent debtor to set aside a deed as a fraudulent preference, the burden of proof as to the fraud is on plaintiff.—*Glenn v. Grover*, 3 Md. 212. [*Cited and annotated in 20 L. R. A. 111, on parol evidence as to consideration of deed.*]

#### § 279.—Trial.

#### § 280.—Judgment and enforcement thereof.

##### *Cross-References.*

In proceedings to enforce payment of claims, see post, § 324.

Privity of assignee as affecting conclusiveness of judgment, see "Judgment," § 685.

Set-off against judgment for conversion of assets, see "Judgment," § 883.

#### § 281.—Review.

##### *Cross-References.*

Appellate jurisdiction dependent on whether case involves freehold, see "Courts," § 219.

Appellate jurisdiction of intermediate appellate courts, see "Courts," § 219.

Exemption from requirement of security on appeal, see "Appeal and Error," § 374.

(a) A trustee under a deed of trust for the benefit of creditors has such an interest in

the estate that he may appeal from a decree awarding to a cestui que trust the proceeds of property wrongfully pledged by his grantor as trustee, since such decree directly tends to diminish the funds in his hands for the payment of creditors.—*Woodside v. Graffin*, 91 Md. 422, 46 Atl. 968. [Cited and annotated in 6 L. R. A. (N. S.) 488, on redemption from trustee's insolvent estate of trust property wrongfully pledged.]

### § 282.—Costs.

#### *Cross-References.*

- Crediting assignee on accounting with costs, see post, § 387.
- In actions in aid of assignment, see post, § 295.
- In actions to set aside assignment, see post, § 355.
- Of accounting, see post, § 400.
- Of proceedings to remove assignee, see ante, § 212.
- Of sale of attached property, see ante, § 193.

### § 283. Discontinuance of proceedings under assignment.

#### *Cross-References.*

- Composition with creditors, see post, § 361.
- Compromise by creditors, see post, § 316.
- Termination of trust, see ante, § 197.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## V. RIGHTS AND REMEDIES OF CREDITORS.

#### *Cross-References.*

- Proceedings against assignor in disregard of assignment, see ante, §§ 191-194.
- Appealability of orders or decisions, see "Appeal and Error," §§ 69, 77, 91.
- Assignee's promise to pay debt of assignor as within statute of frauds, see "Frauds, Statute of," § 33.
- Liability of assignee of stockholder of national bank for debts of bank, see "Banks and Banking," § 248.
- Presentation of claim as precluding other remedy, see "Election of Remedies," §§ 3, 7.
- Right to replevy property in hands of assignee, see "Replevin," § 4.
- Subrogation of creditor to rights of other creditors, see "Subrogation," § 22.

### (A) IN AID OF ASSIGNMENT.

#### *Cross-Reference.*

- Jurisdiction of federal courts of action to enforce execution of assignment, as dependent on diverse citizenship of parties, see "Courts," § 310.

### § 284. Relation of creditors to assignment.

#### *Cross-Reference.*

- Rights as to property assigned in general, see post, § 288.

### § 285. (Omitted from the classification used herein.)

### § 286. Examination of debtor.

#### *Cross-Reference.*

- Expenses of examination chargeable to estate, see post, § 318.

### § 287. Inspection of books and examination of witnesses.

#### *Cross-References.*

- Examination of assignee on accounting, see post, § 396.
- Competency of debtor's attorney, see "Witnesses," § 200.

### § 288. Rights as to property assigned in general.

#### *Cross-References.*

- Property conveyed by assignment, see ante, §§ 173-183.
- Relation of creditors to assignment, see ante, § 284.

### § 289. Discovery, collection, and protection of assets.

#### *Cross-References.*

- By assignee, see ante, §§ 224-230.
- Right of creditors to intervene, see ante, § 276.

### § 290. Property fraudulently conveyed.

#### *Cross-References.*

- Right of assignee to avoid fraudulent conveyance by assignor, see ante, § 228.
- Rights of creditors after discharge of assignee, see post, § 404.
- Right to attack assignment, see post, § 341.
- Title of assignee to property fraudulently conveyed, see ante, § 179.
- Transfers in fraud of creditors in general, see "Fraudulent Conveyances."

### § 291. Illegal preferences.

#### *Cross-References.*

- As constructive assignment, see ante, §§ 11-17.
- Prior claims or liens as constituting illegal preferences, see post, § 338.
- Rights of assignee, see ante, § 230.

### § 292. (Omitted from the classification used herein.)

### § 293. Enforcement of trust.

#### *Cross-References.*

- See post, §§ 347, 348.
- Estoppel to claim under assignment or trust, see post, § 297.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

Remedies on assignee's failure to file bond, see ante, § 205.

Removal of assignee or trustee, see ante, § 212.

Jurisdiction of federal court, see "Courts," § 310.

### § 294. Illegal or invalid acts of assignee.

#### *Cross-References.*

Estoppel to attack assignment, see post, § 342.

Improper payment of claims, see post, § 323.

Liability of assignee or trustee for loss of property, see ante, § 261.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 295. Actions by creditors.

#### *Cross-References.*

Transactions constituting constructive assignment, see ante, §§ 11-17.

Creditors' suits in general, see "Creditors' Suit."

Effect of action to have bankrupt's conveyance declared a constructive assignment, see "Bankruptcy," § 191.

Power of court of chancery to cancel levy under execution of common law court, see "Execution," § 253.

Right of creditor attacking conveyance as fraudulent to attack it as a preferential assignment on failure of proof, see "Action," § 37.

Surrender of property to trustee in bankruptcy, see "Bankruptcy," § 144.

Actions on official bond of assignee or trustee, see post, § 415.

Actions to set aside assignment, see post, § 343.

Appointment of receiver and marshaling assets, see post, § 311.

Waiver of objections to jurisdiction, see "Courts," § 37.

Actions to avoid preferential transfers in general, see "Fraudulent Conveyances," § 248.

Computation of period of limitation, see "Limitation of Actions," §§ 60, 95, 102, 119.

What creditors may attack preference, see ante, § 291.

(a) A prayer to declare a person insolvent specifying the persons to whom defendant had "assigned, given, sold, and transferred" his property with intent to hinder, delay, and defraud petitioners and his other creditors while he was insolvent and in contemplation of insolvency, states facts sufficient and proper to be submitted to a jury under Code, art. 47, § 23.—*Castleberg v. Wheeler*, 68 Md. 266, 12 Atl. 3.

### (B) PRESENTATION, PROOF, AND PAYMENT OF CLAIMS.

#### *Cross-References.*

Enforcement of judgment against assignee, see ante, § 280.

Interpretation of provisions in assignment as to debts preferred and order of payment, see ante, § 196.

Presentation of claim as waiver of prior claim or lien on property, see post, § 339.

Assignee's promise to pay debt as within statute of frauds, see "Frauds, Statute of," § 33.

Exhaustion of personalty as condition precedent to enforcement of tax against realty, see "Taxation," § 624.

Existence of trust as affecting limitations, see "Limitation of Actions," § 102.

Payment of dividends as suspending statute of limitations or reviving debt barred, see "Limitation of Actions," § 155.

Presentation of claim as election against other remedy, see "Election of Remedies," §§ 3, 7.

Subrogation of assignee to rights of creditor, see "Subrogation," § 10.

Time of taking appeal from decision of district court rendered on appeal from assignee, see "Appeal and Error," § 339.

### § 296. Necessity of acceptance of assignment by creditor.

#### *Cross-Reference.*

As essential to validity of assignment, see ante, § 44.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 297. Estoppel to claim under assignment.

#### *Cross-References.*

Estoppel to assert rights in derogation of assignment, see post, § 331.

Estoppel to attack assignment, see post, § 342.

Right to require accounting by assignee, see post, § 365.

(a) The prosecution of claims to judgment cannot diminish the right of a creditor in a court of equity, who applies for a distributive share of the proceeds from the debtor's property sold under a deed of trust.—*Dodge v. Stanhope*, 55 Md. 113.

### § 298. Claims provable.

#### *Cross-References.*

Claims of assignee or his agent, see post, § 313.

Rights of partnership and individual creditors, see post, § 314.

Usurious claims, see "Usury," § 127.

(a) A contract with plaintiff provided that E. should not sell goods which he manufactured to certain firms for a less sum than the price at which they were to be furnished to plaintiff, but no specific penalty was agreed on for its breach. Thereafter the plaintiff filed accounts with the assignee for benefit of the creditors of E., for sums alleged to have been paid by him in excess of the prices charged by E. to one of the designated firms. *Held*, that the breach created a liability only as to the losses actually sustained thereby by plaintiff, which were unliquidated damages, and were not in that shape a provable "debt" against the estate.—*Benjamin v. Bruce*, 87 Md. 240, 39 Atl. 810. [*Cited and annotated in 1 L. R. A. (N. S.) 447, on mutuality of obligation where one party's obligation not definite and certain.*]

(b) A claim against the assignee for benefit of creditors of E., a manufacturer, for commissions on sales made by E. to firms other than those designated in a contract with plaintiff, providing that E. should not sell any goods which he manufactured except to certain firms and to plaintiff, but with no penalty provided for a breach thereof, cannot be allowed, since the measure of damages is the actual loss falling on plaintiff by reason of such breach, which, being unliquidated, must be evidenced by a judgment before the claim becomes a "debt" provable against the estate.—*Benjamin v. Bruce*, 87 Md. 240, 39 Atl. 810. [*Cited and annotated in 1 L. R. A. (N. S.) 447, on mutuality of obligation where one party's obligation not definite and certain.*]

(c) A promise by a husband to pay his wife certain money, being without consideration, cannot be included in the debts of the husband on assignment.—*Farmers' & Merchants' Nat. Bank v. Jenkins*, 65 Md. 245, 3 Atl. 302. [*Cited and annotated in 56 L. R. A. 834, on burden of proof of husband's debt to wife for property received from her.*]

(d) A firm pledged its notes as collateral for its acceptances, and afterwards failed and executed a deed of trust for creditors. The notes were sold, and their proceeds credited upon the indebtedness, and the

pledgees sought to prove under the deed of trust for the balance of their claim. *Held*, that they could do this and that the purchasers of the notes in good faith could also prove for their full amount, although they bought them after maturity.—*In re Woods*, 52 Md. 520. [*Cited and annotated in 32 L. R. A. (N. S.) 42, on right of purchaser to enforce collateral for more than amount secured.*]

(e) Where an assignment for benefit of creditors directed the property to be sold, and the proceeds to be paid to releasing creditors only and the surplus to the grantor, in an action by creditors attaching the assigned property evidence is inadmissible to show that the assignor intended the assignment to be for the benefit of all his creditors, and that the omission was a mistake of the scrivener.—*Farrow v. Hayes*, 51 Md. 498. [*Cited and annotated in 30 L. R. A. 467, on intent to defraud sustaining attachment.*]

#### § 299. Necessity of presentation.

(a) Where there is a surplus, a creditor whose claim has been omitted may participate in the distribution, if he has not been guilty of laches.—*Price v. Bank*, 29 Md. 369.

#### § 300. Time for presentation.

#### § 301. Notice to creditors.

#### § 302. Statement and verification of claim.

#### § 303. Presentation and filing.

#### § 304. (Omitted from the classification used herein.)

#### § 305. Failure to present.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 306. Contest of claims.

(a) Creditors have the right to contest the claim of their debtor's wife to share as a creditor in the avails of an assignment for the benefit of creditors.—*Luckemeyer v. Seltz*, 61 Md. 313. [*Cited and annotated in 30 L. R. A. 480, on intent to defraud sustaining attachment.*]

(b) When property conveyed to trustees for the benefit of creditors has been sold, a judgment creditor who files his claim to obtain his proportion in a just distribution of

the proceeds among the bona fide creditors does not thereby become bound to assent to the payment of every charge made by the deed upon the property conveyed, whether just or unjust.—*Reiff v. Eshleman*, 52 Md. 582.

(c) When there is an assignment by a debtor for the benefit of his creditors generally, a creditor who takes thereunder is not thereby concluded from impeaching any of the debts attempted to be secured by such assignment, or from showing fraud in those the payment of which would operate to his prejudice.—*Mackintosh v. Corner*, 33 Md. 598.

(d) A debtor conveyed all his property to a trustee for the benefit of his creditors, declaring in the conveyance the order in which his debts should be paid. *Held*, that a creditor electing to claim under such conveyance was not estopped to contest the claim of a prior creditor therein.—*Starr v. Dugan*, 22 Md. 58.

### § 307. Allowance or disallowance.

#### *Cross-References.*

See ante, § 249.

Jurisdiction of courts over claims, see ante, § 218.

Time of taking appeal, see "Appeal and Error," § 339.

(a) One filing a claim against an assigned estate has the burden of proof.—*Rippel-meyer v. Hiss Mfg. Co.*, 90 Md. 386, 45 Atl. 529.

(b) Where a court of equity takes jurisdiction of the distribution of a fund realized under an assignment for benefit of creditors, if a claim is not disputed it will be allowed by the auditor on the production of such proof as is required for authenticating a claim in the orphans' court.—*Third Nat. Bank v. Lanahan*, 66 Md. 461, 7 Atl. 615.

(c) A preferred claim mentioned in a deed of trust for the benefit of creditors dated in March, 1870, was described as "two notes to D. Bros., of Piedmont,—one for the sum of \$550, and the other for \$300"; each stated to be indorsed by certain named parties. In the distribution by the auditor of the funds realized under this deed, an allowance under the above preference was made to "D. Bros. on their note dated April. 12, 1871, for

\$700." *Held*, that in the absence of any attempt or offer made to show the identity of this note, or its connection in any way by part renewal or otherwise, with the two notes mentioned in the deed, the allowance was erroneous.—*Davis v. Shaw*, 42 Md. 410.

(d) Where a trust deed for creditors describes a claim as a certain amount due "J. T., for which he now holds my note, indorsed" by certain persons, and the claim presented is a single bill payable to "J. S. T.," in which the grantor in the deed and the persons named as indorsers are joint makers, parol evidence is admissible to identify the claim as the one sought to be described in the deed.—*Davis v. Shaw*, 42 Md. 410.

(e) A claim preferred in a deed of trust for creditors was described as "the sum of \$500 to J. T., for which he now holds my note indorsed by" three persons named. The instrument produced before the auditor was a single bill payable to "J. S. T." on demand, signed and sealed by the grantor in the deed, and the three named indorsers, as joint makers, bearing a date prior to that of the deed. Parol proof was offered in support of the claim, which established the identity of claimant with the "J. T." named in the deed, that this was the only debt the grantor in the deed ever owed him, that he held the obligation at the date of the deed, and that the other three parties were sureties thereon. *Held*, as satisfactorily proven, that the claim was the one intended by the grantor to be provided for in the deed of trust.—*Davis v. Shaw*, 42 Md. 410.

(f) Where a preference is claimed by a creditor, it should appear by the proceedings that there were other creditors whose claims are proved and allowed; and the amount of the estate and claims should also appear, so as to show the proportion which the creditor claiming a preference is entitled to, in case he had no right to a preference.—*Winchester v. Brooke*, 2 H. & J. 1.

### § 308. Statutory preferences.

#### *Cross-References.*

See post, §§ 319, 333.

Fiduciary obligations, see post, § 310.

Priority of landlord's lien, see post, § 334.

Settlement of suit to enforce preferred claims, see "Compromise and Settlement," § 8.

Duty of assignee to pay taxes, see ante, § 257.

Effect of delay in presenting claims, see ante, § 300.

Exhaustion of personalty as condition precedent to enforcement of tax against realty, see "Taxation," § 624.

Redemption from tax sale, see "Taxation," § 701.

Taxes against bank stock, see "Banks and Banking," § 78.

Proceedings to enforce payment, see post, § 324.

Priority in distribution of proceeds of execution sale, see "Execution," § 324.

Right to lien or preference in general, see "Master and Servant," § 82.

(a) Under Code, art. 47, § 15, providing that claims for wages contracted within three months before an assignment shall be preferred to all claims except those of such persons as shall hold liens on the estate recorded at least three months before the assignment, such claims for wages are superior to the claim of a creditor who had recovered judgment and levied on goods of the insolvent a week before the assignment.—*Hess v. Jewell*, 85 Md. 235, 36 Atl. 758.

(b) Such claims are superior to a distress for rent issued the day after the assignment.—*Hess v. Jewell*, 85 Md. 235, 36 Atl. 758.

### § 309. Preferences in assignment.

#### *Cross-References.*

Interpretation of assignment, debts preferred, see ante, § 196.

Validity and effect of preferences in general, see ante, §§ 104-138.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 310. Rights of creditors to priority.

#### *Cross-References.*

Application of proceeds of property sold by assignees free from liens, see ante, § 248.

Attorneys' fees and expenses, see post, § 318.

Claims and liens prior or superior to assignments, see post, §§ 330-340.

Evidence, see ante, § 307.

Statutory preferences, see ante, § 308.

Interpretation of provisions in assignment as to debts preferred and order of payment, see ante, § 196.

Waiver of mechanic's lien, see "Mechanics' Liens," § 207.

See, also, ante, § 308.

Costs of appeal from decree determining priority of liens, see "Costs," § 240.

Effect of assignment as conveying trust funds, see ante, § 176.

Equitable lien for enforcement of trust, see post, § 332.

Estoppel to claim trust fund, see post, § 331.

Fiduciary obligations, see ante, § 310.

#### *Annotation.*

Priority of claims of laborers.—18 L. R. A. 305, note.

Deposit by broker or factor to his own account of proceeds of sale of customer's stock or property as creating a trust entitled to a preference.—27 L. R. A. (N. S.) 808, note.

Priority of foreign attachment over foreign assignment for creditors.—17 L. R. A. 88, note.

Sufficiency of assignment to confer priority on claim of United States.—29 L. R. A. 232, note.

(a) Where a trustee, under an assignment for the benefit of creditors, takes possession of mortgaged leasehold property, and collects rents therefrom, the mortgagor having expressly covenanted, for himself and assigns, to pay the ground rent and all taxes on the premises when legally demandable (the mortgage debt being overdue at the date of the assignment, and taxes, ground rent, and interest being in arrear, and the mortgage security being insufficient), he is bound, on demand by the mortgagee, to apply rents so collected to such taxes, ground rent, and interest.—*Barron v. Whiteside*, 89 Md. 448, 43 Atl. 825.

(b) Where the mortgagee of mortgaged leasehold property in possession of a trustee, under an assignment for the benefit of creditors (the mortgage debt being overdue at the date of the assignment, and taxes, ground rent, and interest being in arrear, and the mortgage security being insufficient), makes demand upon such trustee for possession of the property, and upon refusal gives notice to the tenants not to pay rent to the trustee, he is entitled, on application to the court administering the trust, to the rents collected by the trustee which accrued after his demand for possession.—*Barron v. Whiteside*, 89 Md. 448, 43 Atl. 825.

(c) Land was conveyed to A. by his sisters, under a partition, the deed reciting that the land was "charged with the pay-

ment" of certain sums, for owelty of partition. For further security he gave his bonds to trustees for his sisters, securing their payment, with the interest, by a deed of trust of the lands. He afterwards made an assignment of the land for creditors. *Held*, that the amounts of the bonds, with accrued interest, constituted a preferred claim on the fund realized from the sale under the assignment.—*Stanhope v. Dodge*, 52 Md. 483.

(d) The vendor of personal property transferred by the vendee, on his insolvency, immediately after the sale, to trustees for the benefit of his creditors, by a deed of trust of all his property, and sold by the trustees, is not entitled to be preferred in the payment of the purchase money due to him out of the proceeds of the trustee's sale.—*Winchester v. Brooke*, 2 H. & J. 1.

### § 311. Marshaling assets in general.

#### *Cross-References.*

Partnership and individual creditors, see post, § 314.

Right of creditors to priority, see ante, § 310.

Secured claims, see post, § 312.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 312. Secured claims.

#### *Cross-References.*

See ante, § 308; post, § 322.

Marshaling assets, see ante, § 311.

Rights of secured creditors to priority, see ante, § 310.

(a) A creditor of an insolvent, who holds collateral security, must either surrender the collateral, or have its value determined by the court, and his claim will be allowed for the difference between the amount thereof and the value of the collateral.—*National Union Bank v. National Mechanics' Bank*, 80 Md. 371, 30 Atl. 913, 45 Am. St. Rep. 350.

### § 313. Claims of assignee, or his agent.

#### *Cross-References.*

Allowance of compensation, see post, §§ 390-393.

Authority to incur expenses, see ante, § 256.

Credit for expenses in account of assignee, see post, § 386.

Expenses of assignment and debts incurred by assignee as preferred claims, see ante, § 310.

Reimbursement and indemnity to, and lien of, assignee, see ante, § 263.

(a) Where a debtor conveys certain lands to a trustee, with direction that they be sold, and the proceeds applied to the satisfaction first of a debt due the trustee, and secondly debts due other creditors, the trustee has no lien as to the claim provided for in the deed on lands other than those conveyed, but may prove any debt not provided for, and as to that will stand on an equality with the general creditors.—*Gibbs v. Cunningham*, 4 Md. Ch. 322.

### § 314. Partnership and individual creditors.

#### *Cross-References.*

Construction of assignment as to debts included, see ante, § 195.

Effect of releases by creditors, see post, § 326.

Estoppel to claim under assignment, see ante, § 297.

(a) A., B., and C. conveyed lands to the same trustee, to be sold, and the proceeds appropriated to the debts of the grantors according to legal priorities. At the time of this conveyance, judgments existed to a large amount against them, both jointly and severally. *Held*, that the proceeds of this fund should be appropriated according to the several sources whence it was derived, and to the priorities of the several liens.—*Dodge v. Doub*, 8 Gill 16.

§ 315. (Omitted from the classification used herein.)

### § 316. Compromises by creditors.

#### *Cross-References.*

Authority of assignee to compromise, see ante, § 220.

Composition with creditors, see post, § 361.

Discontinuance of proceedings under assignment, see ante, § 283.

### § 317. Interest.

### § 318. Attorneys' fees and expenses.

#### *Cross-References.*

Authority of assignee to incur expenditures, see ante, § 256.

Compensation of assignee, see post, §§ 390-393.

Costs and expenses of accounting, see post, § 400.

Costs in actions to set aside assignment, see post, § 355.

Credits for expenditures in account of assignee, see post, § 387.

Expenses of assignment as preferred claims, see ante, § 310.  
 In action in aid of assignment, see ante, § 295.  
 Validity of preferences, see ante, §§ 124, 125.

### § 319. Proceedings for distribution.

#### *Cross-References.*

Proceedings for contest and allowance of claims, see ante, § 306.  
 Proceedings for hearing and allowance of assignee's account, see post, § 396.  
 Vacating approval or confirmation of assignee's report, see post, § 398.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 320. Computation and declaration of dividend.

(a) Where an assignment is made under a trust deed directing the trustee to pay all the creditors in full if the assets are sufficient, and, "if not, then ratably and equally according to their respective amounts," a bank with whom notes due the debtor were deposited as collateral to obtain advances on his own notes, and which has realized a large part on the collaterals, cannot claim a dividend on its whole debt without deducting the amount realized on the collaterals.—*Third Nat. Bank v. Lanahan*, 66 Md. 461, 7 Atl. 615.

### § 321. Payment.

#### *Cross-References.*

See ante, § 317.  
 Credits for payment on accounting of assignee, see post, § 385.  
 Sufficiency of plea of payment, see "Payment," § 60.

### § 322. Effect of payment.

#### *Cross-Reference.*

Discharge of debtor, see post, § 362.

### § 323. Improper payment.

### § 324. Proceedings to enforce payment.

### § 325. Failure to make payment.

#### *Cross-References.*

Improper payments, see ante, § 323.  
 Liability for interest, see post, § 382.  
 Personal liability of assignee or trustee for administration of estate, see ante, §§ 260, 261.  
 Limitations, see "Limitation of Actions," § 57.

(a) A trustee for the benefit of creditors cannot be charged individually with a judg-

ment recovered against him individually in replevin for goods withheld by him as trustee, and paid by him out of the trust fund by order of the court, where it appears that, though sued individually in the replevin suit, he was treated as trustee.—*Weil v. Lehmayr*, 74 Md. 81, 21 Atl. 563.

### § 326. Releases by creditors.

#### *Cross-References.*

Validity of provisions for release in assignment, see ante, § 39.  
 Effect of release of one of joint debtors, see "Release," § 28.

(a) The makers of a note, in embarrassed circumstances, before its maturity assigned all their property to a trustee, with authority to him to dispose of it, and distribute the proceeds among their creditors, on the condition (agreed to and accepted by their creditors, including indorsers of such note) that, if the net proceeds of the assignment should pay to the creditors not less than 50 cents on the dollar of their respective claims, the same should be in full satisfaction of all claims and demands against them. The trustee went into possession, and proceeded to execute the trust. *Held*, that the release given by the second indorser to the makers of the note in no manner impaired or affected the liability to him of the first indorser: (1) Because the latter, having united in the composition, must be held to have consented to the release by the former; (2) because, having himself released the makers of the note, his rights were in no manner impaired or affected by the act of the former, and therefore it could not operate to discharge him from his liability as indorser.—*Ludwig v. Iglehart*, 43 Md. 39.

### § 327. Liability to refund.

### § 328.— Creditors in general.

#### *Cross-References.*

Right of action by assignee, see ante, § 268.  
 Limitations, see "Limitation of Actions," § 49.  
 Recovery by assignee of money as paid under mistake, see "Payment," § 85.

### § 329.— Preferred creditors.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.



**(C) CLAIMS AND LIENS PRIOR OR SUPERIOR TO ASSIGNMENT.**

*Cross-References.*

- Assignor's title to property conveyed, see ante, § 176.  
 Estate or interest created and title acquired by assignee, see ante, § 184.  
 Jurisdiction of action by or against assignee, see ante, § 274.  
 Jurisdiction over adverse proceedings, see ante, § 218.  
 Payment of secured claims, see ante, § 312.  
 Power of assignee as to collection and protection of assigned estate, see ante, §§ 224-230.  
 Priorities in proceedings for distribution, see ante, §§ 308-310.  
 Proceedings after assignment in disregard thereof, see ante, §§ 191-194.  
 Decisions of state courts as authority in federal courts, see "Courts," § 366.  
 Law dissolving attachment on property of insolvent debtor on his making assignment within certain time thereafter as impairing vested rights and obligation of contracts, see "Constitutional Law," §§ 106, 161.

**§ 330. Rights in derogation of assignment in general.**

*Cross-Reference.*

- Right of assignee to pay bonus for cancellation of lease, see ante, § 256.

*Annotation.*

- Fraudulent assignment for creditors as ground of attachment.—30 L. R. A. 480, note.

(a) An agreement between a debtor and creditor recited the advancement of money by the creditor for the purchase of hides and bark by the debtor, and provided that such articles should remain the property of the creditor, and that the hides, when tanned, should be shipped to the creditor, and the proceeds applied on the debtor's account. The debtor shipped a quantity of the leather to the creditor, the proceeds of which were applied on the account. *Held*, that the claim of the creditor to such articles, as against a conventional trustee for the benefit of creditors, or other creditors of the debtor whose claims existed at the time of the agreement, was superior.—*Brown v. Deford*, 83 Md. 297, 34 Atl. 788; *Farmers' & Mechanics' Nat. Bank v. Same*, *Id.*

**§ 331. Estoppel to assert rights.**

*Cross-References.*

- Estoppel of assignee to assert right to assets, see ante, § 227.

Estoppel to attack assignment, see post, § 342.

Estoppel to claim under assignment, see ante, § 297.

Waiver of rights, see post, § 339.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 332. Rights to specific property or its proceeds.**

*Cross-References.*

- Effect of assignment as conveying assigned goods, see ante, § 176.  
 Enforcement, see post, § 340.  
 Following trust property, see ante, § 176.  
 Right of vendor to reclaim goods, see ante, § 176.

*Annotation.*

Attachment of property in hands of assignee for creditors.—26 L. R. A. 593, note.

Right to maintain action to recover property in specie against one who has made an assignment for his creditors.—18 L. R. A. (N. S.) 1272, note.

(a) No lien exists on assets in the hands of an assignee for the benefit of creditors for trust funds used by the insolvent in paying debts, and which did not go to swell the fund sought to be charged.—*Drovers' & Mechanics' Nat. Bank v. Roller*, 85 Md. 495, 37 Atl. 30, 36 L. R. A. 767, 60 Am. St. Rep. 314.

(b) Money collected by a broker's assignee for the benefit of creditors from sales made by the broker belongs to the consignor for whom the sales were made, where the check drawn by the broker therefor was dishonored.—*Drovers' & Mechanics' Nat. Bank v. Roller*, 85 Md. 495, 37 Atl. 30, 36 L. R. A. 767, 60 Am. St. Rep. 344.

**§ 333. Assignments or other transfers of funds, written instruments, or rights of actions.**

**§ 334. Liens and charges in general.**

*Cross-References.*

- See ante, § 330.  
 Application of proceeds of property sold by assignee free from liens, see ante, § 248.  
 Effect of assignment as conveying trust funds, see ante, § 176.  
 Enforcement of lien, see post, § 340.  
 Lien of assignee, see ante, § 263.  
 Priority in distribution of assets embracing trust funds, see ante, § 310.  
 Priority of payment of expenses of administration, see ante, § 310.  
 Rights as to trust funds, see ante, § 332.  
 Statutory preferences, see ante, § 308.

Lien of carrier for freight charges as dependent on possessions, see "Carriers," § 197.  
 Necessity of notice to redeem from tax sale, see "Taxation," § 701.  
 Taxation of property in hands of assignee, see "Taxation," § 87.  
 Taxes against bank stock, see "Banks and Banking," § 78.  
 Enforcement of vendor's rights, see post, § 340.  
 Right of vendor to reclaim goods, see ante, § 176.  
 Assignment by contractor affecting subcontractor's right to mechanic's lien, see "Mechanics' Liens," § 114.  
 Waiver of lien, see "Mechanics' Liens," § 207.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 335. Mortgages and pledges.

#### *Cross-References.*

See ante, §§ 112, 194.  
 Application of proceeds of property sold by assignee free from liens, see ante, § 248.  
 Change of pledge without assignee's consent, see ante, § 224.  
 Enforcement, see post, § 340.  
 Estoppel to assert right, see ante, § 331.  
 Jurisdiction of court to foreclose prior mortgage, see ante, § 218.  
 Mortgages or pledges constituting illegal preferences, see post, § 338.  
 Right of assignee to defend against fraudulent mortgage, see ante, § 228.  
 Right of assignee to redeem, see ante, § 227.  
 Rights of creditors to priority on distribution, see ante, § 310.  
 Title acquired by assignee, see ante, § 184.  
 Validity of mortgage as against undelivered assignment, see ante, § 67.  
 Waiver of lien, see post, § 339.  
 Joinder of trustee for creditors in suit to foreclose mortgage, see "Mortgages," § 432.

(a) A debtor agreed with a creditor that certain personal property should be given to the creditor as security for the payment of four notes, and, on failure to pay the notes, the property should become that of the creditor. The debtor remained in possession of the property, failed to pay the notes as agreed, and made an assignment for the benefit of his creditors. *Held*, that the creditor was entitled to have the agreement enforced in equity, except as against subsequent creditors without notice of said lien, and those with superior equities.—*Textor v. Orr*, 86 Md. 392, 38 Atl. 939.

(b) An agreement, for a valuable consid-

eration, to execute a chattel mortgage on a wheat crop, will be treated in equity as a mortgage, since equity regards that as done which the parties themselves have agreed to do; and the equitable lien created thereby is valid against a general assignee for the benefit of mortgagor's creditors, since such assignees are not bona fide purchasers for a valuable consideration.—*G. Ober & Sons Co. v. Keating*, 77 Md. 100, 26 Atl. 501.

### § 336. Prior attachment or garnishment.

#### *Cross-References.*

After assignment, see ante, § 193.  
 Before acceptance by creditors, see ante, § 44.  
 Before approval of partnership assignment by all partners, see ante, § 193.  
 Before notice to debtor of assignor, see ante, § 193.  
 Before recording assignment, see ante, § 163.  
 Intervention by assignee, see ante, § 276.  
 Jurisdiction of courts to determine rights of parties, see ante, § 218.  
 Effect of stipulation by parties to attachment suit, see "Stipulations," § 14.  
 Law dissolving lien as impairing vested rights and obligation of contracts, see "Constitutional Law," §§ 106, 161.  
 Subsequent attachment of property fraudulently conveyed, see "Attachment," § 180.

### § 337. Prior judgment or execution.

#### *Cross-References.*

Application of proceeds of property sold by assignee, see ante, § 248.  
 Necessity of recording assignment as against subsequent levy, see ante, § 163.  
 Proceedings in disregard of assignment, see ante, § 194.

(a) From a deed of assignment to trustees for the benefit of creditors, one lot of land included in the debtor's schedule was omitted by mistake, but possession of it was delivered to the trustees. Two creditors of the debtor recovered judgment against him, one before possession was delivered to the trustees, and the other afterwards. The latter received a dividend under the assignment. *Held*, that the lien of the first judgment was valid against the assignment.—*Moale v. Buchanan*, 11 G. & J. 314. [*Cited and annotated* in 3 L. R. A. (N. S.) 796, on taking possession as part performance of oral contract as to realty; in 28 L. R. A. (N. S.) 877, 878, on relief from mistake of law as to effect of instrument.]

**§ 338. Prior claims or liens as constituting illegal preferences.**

*Cross-References.*

Preferences vitiating assignment, see ante, §§ 104-139.

Rights and remedies of creditors as to illegal preferences, see ante, § 291.

Rights of assignee, see ante, § 230.

Estoppel to attack mortgage, see ante, § 34.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 339. Waiver.**

*Cross-References.*

Estoppel to assert rights, see ante, § 331.

Contract waiving mechanic's lien, see "Mechanics' Liens," § 207.

(a) If judgment creditors assent to a deed of trust made by their debtors, and by their conduct induce third parties to purchase such estate, then bound by their judgments, and to believe that they would look to the trustee, and not to their liens, for payment of their claims, such conduct would furnish the purchasers a valid equitable defense against the enforcement of the judgment liens by a resale under execution.—*Doub v. Barnes*, 4 Gill 1.

(b) A judgment creditor who received a dividend from a trustee thereby became an equitable party to the deed of trust, and cannot be permitted to enforce his judgment in opposition to the contract on which the deed was founded.—*Moale v. Buchanan*, 11 G. & J. 314. [Cited and annotated in 28 L. R. A. (N. S.) 877, 878, on relief from mistake of law as to effect of instrument.]

(c) Where property subject to judgment is assigned in trust for creditors, and, with the knowledge of the creditors, the trustee sells the land, under circumstances inducing the belief that the creditors assented to such sale, and looked to the trustee for their claims, they cannot enforce their judgments against the land so sold, unless their consent to its sale, together with their consent to look to the trustee's fund, was induced by fraud.—*Doub v. Barnes*, 1 Md. Ch. 127.

(d) A party executing a deed of trust made a formal proposal to his creditors, in writing, which was accepted by some; whereupon the trust was created, and, upon a dividend being made, a non-assenting

creditor received from the trustees an equal share with the rest. *Held*, that such creditor must be considered as affirming the deed, and is bound by it.—*Doub v. Barnes*, 1 Md. Ch. 127.

(e) Defendants conveyed a large amount of property to trustees to sell the same, and out of the proceeds to pay the creditors, without priority or preference. The trustees sold part thereof to complainants and others. When the deed was executed there were judgments against the grantor, on some of which writs of scire facias were issued, and fiats rendered against the original defendants and the terre-tenants, the purchasers from the trustees; and on these fiats writs of fieri facias were issued, and laid on the lands purchased by complainant. *Held*, on a bill to restrain proceedings on these executions, that if the judgment creditors assented to the deed of trust, and induced complainant and others to become purchasers, and to believe that the creditors would look to the trustees for the payment of their claim, and not to their judgment liens, such creditors were estopped to enforce their judgments.—*Doub v. Barnes*, 1 Md. Ch. 127.

(f) But where a deed, in which all legal priorities were preserved, was executed without any proposition made to creditors, or any previous consultation or agreement with them, a creditor, by receiving money from the trustees in part payment of his judgment, does not thereby render the provisions of the deed binding on him, nor waive the lien of his judgment.—*Doub v. Barnes*, 1 Md. Ch. 127.

**§ 340. Determination and enforcement.**

*Cross-References.*

Jurisdiction of courts in general, see ante, § 218.

Concurrent and conflicting jurisdiction of courts, see "Courts," § 475.

Jurisdiction of court to foreclose mortgage as affected by assignment for benefit of creditors, see "Courts," § 478.

Limitations, see "Limitation of Actions," § 49.

Responsiveness of findings, see "Trial," § 396.

Joinder of trustee in suit to foreclose mortgage, see "Mortgages," § 432.

(a) In an assignment for benefit of creditors, evidence *held* to show that the as-

signor had executed a valid bill of sale prior to the assignment to another to secure a debt for a certain amount as claimed.—*International Harvester Co. v. Blackway*, 113 Md. 57, 77 Atl. 125.

#### (D) SETTING ASIDE ASSIGNMENT.

##### *Cross-References.*

Credits in account of assignee after setting aside assignment, see post, § 388.

Discontinuance of proceedings under assignment, see ante, § 283.

Removal of assignee or trustee, see ante, § 212.

Requisites and validity, see ante, §§ 1-170.

Termination of trust, see ante, § 197.

Action in aid of attachment, see "Attachment," § 224.

As fraudulent conveyance under bankruptcy laws, see "Bankruptcy," § 178.

Fraudulent assignment as ground for attachment, see "Attachment," § 43.

#### § 341. Right to have assignment set aside.

##### *Cross-References.*

Persons entitled to attack assignment, see ante, § 47.

Right of building and loan association and its assignee to settle stockholder's action to set aside assignment, see "Compromise and Settlement," § 4.

(a) Creditors sustain such a relation to a debtor as entitles them to maintain a suit to set aside a deed of trust for creditors on the ground that the debtor was at the time a lunatic.—*Riley v. Carter*, 76 Md. 581, 25 Atl. 667, 35 Am. St. Rep. 443, 19 L. R. A. 489. [*Cited and annotated in* 42 L. R. A. (N. S.) 343, on mortgage given by incompetent who had not been declared such.]

(b) Acts 1880, c. 172, and acts amendatory thereof (Code, art. 47, § 22), declare what acts of a debtor constitute acts of insolvency, among which is the making of an assignment, gift, sale, conveyance, or transfer of his property with intent to delay, hinder, or defraud his creditors, and provides that, where a debtor has committed any of such acts, a petition may be filed by any one or more of his creditors within four months after the commission of such act for the appointment of a trustee, to take possession of the debtor's property for the benefit of all his creditors. *Held*, that where a debtor conveyed his property to a trustee for the benefit of his creditors, though it includes all his property, and without preference,

such creditors are entitled to their action to declare the debtor an insolvent, to set aside the appointment of the conventional trustee, and for the appointment of a permanent trustee.—*Riley v. Carter*, 76 Md. 581, 25 Atl. 667, 35 Am. St. Rep. 443, 19 L. R. A. 489.

(c) A creditor who claims a share in the proceeds of sale under a deed of trust makes himself so far a party to such deed as to lose his right to deny its validity.—*Lanahan v. Latrobe*, 7 Md. 268. [*Cited and annotated in* 24 L. R. A. 370, 378, on necessity for acceptance of assignment or deed of trust for creditors.]

#### § 342. Estoppel to attack assignment.

##### *Cross-References.*

See ante, § 249.

Estoppel to assert rights in derogation of assignment, see ante, § 331.

Estoppel to claim under assignment, see ante, § 297.

(a) A creditor who participates in proceedings in equity for distribution of property sold under a deed of trust so far makes himself a party to the deed as to waive his right to deny its validity, and to elect to surrender any lien he may have had upon the property, and to look to the proceeds of sale instead.—*Horsev v. Chew*, 65 Md. 555, 5 Atl. 466. [*Cited and annotated in* 24 L. R. A. 370, 378, on necessity for acceptance of assignment or deed of trust for creditors.]

(b) One who, with knowledge of the facts, accepted a pro rata share under a general assignment for the benefit of creditors, cannot thereafter attack the assignment for fraud.—*Moale v. Buchanan*, 11 G. & J. 314. [*Cited and annotated in* 28 L. R. A. (N. S.) 877, 878, on relief from mistake of law as to effect of instrument.]

#### § 343. Nature and form of remedy.

##### *Cross-Reference.*

Garnishment of assignee before giving bond, see ante, § 193.

#### § 344. Grounds of action.

##### *Cross-References.*

Invalidity in general, see ante, §§ 1-170.

Grounds for termination of trust, see ante, § 197.

#### § 345. Defenses.

**§ 346. Jurisdiction and venue.***Cross-Reference.*

Concurrent and conflicting jurisdiction of state and federal courts, see "Courts," § 493.

**§ 347. Time to sue and limitations.***Cross-Reference.*

Computation of period of limitations, see "Limitation of Actions," § 127.

(a) A creditor attempting to nullify a deed of assignment made by his debtor must take action within a reasonable time after the deed is executed.—*Miller v. Matthews*, 87 Md. 464, 40 Atl. 176.

**§ 348. Parties.***Cross-Reference.*

Effect of judgment on creditors not parties, see post, § 356.

**§ 349. Injunction and receiver.***Cross-Reference.*

Appointment of receiver on removal of assignee, see ante, § 214.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 350. Pleading.***Cross-Reference.*

Necessity of alleging facts constituting fraud in assignment, see "Pleading," § 8.

(a) An answer which, under oath, denies that an assignment was made with a view to applying for relief under the insolvent law, though coming from the grantee, and not the insolvent, is sufficient to put upon proof one seeking to avoid the assignment.—*Malcolm v. Hall*, 9 Gill 177, 52 Am. Dec. 688.

**§ 351. Evidence.***Cross-References.*

As to fraud, see ante, § 161.

As to preferences, see ante, § 138.

As to reservations, see ante, § 100.

As to validity in general, see ante, § 51.

(a) Where property assigned for benefit of creditors had been attached six months thereafter on the ground that the assignment was made with intent to defraud creditors, the original copies of the equity papers in the court where the assignee was administering his trust were admissible as evidence for defendant, to show the character of the acts of the assignee subsequent

to the assignment.—*Miller v. Matthews*, 87 Md. 464, 40 Atl. 176.

(b) Where a debtor assigned all of his property, without reservation, for the benefit of all his creditors, and without preference, the fact that eight days thereafter he applied for his discharge in insolvency did not of itself establish the fact that the assignment was made with the intention of procuring the discharge, when the assignor denied that he so intended, and there was evidence that he was forced to make the application by the rigorous action of one of his creditors.—*Malcolm v. Hall*, 9 Gill 177.

**§ 352. Trial.****§ 353. Judgment.***Cross-References.*

See ante, § 341.

Mandamus to compel vacation, see "Mandamus," § 4.

**§ 354. Review.***Cross-Reference.*

As dependent on nature of determination, see "Appeal and Error," § 77.

**§ 355. Costs.****§ 356. Operation and effect.***Cross-References.*

See ante, § 174.

Allowance to assignee of expenses and counsel fees when assignment is set aside, see post, § 388.

Compensation of assignee when assignment is set aside, see post, § 393.

Estoppel to claim under assignment, see ante, § 297.

*Annotation.*

Rights of creditor who has successfully assailed assignment or deed of trust.—54 L. R. A. 343, note.

Right of creditor to participate under assignment or deed of trust for the benefit of creditors which he has repudiated.—54 L. R. A. 343, note.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**VI. RIGHTS AND REMEDIES OF ASSIGNOR.***Cross-Reference.*

On discontinuance of proceedings under assignment, see ante, § 283.

**§ 357. Interest in property assigned in general.***Cross-References.*

See ante, § 193.

Right to sue on policy of insurance, see ante, § 180.

**§ 358. Exemptions.***Cross-References.*

Lien on homestead, see ante, § 312.

Property passing by assignment, see ante, § 182.

Reservation of exemptions in assignment, see ante, § 97.

Validity of transfers as to creditors, see "Fraudulent Conveyances," § 51.

(a) Where a debtor executes an absolute deed of trust of all his property for the benefit of his creditors, and reserves no right to exemption, he is not, on the sale thereof, entitled to any of the proceeds as exemption money.—Carroll v. Else, 75 Md. 301, 23 Atl. 740.

(b) Where an assignor reserves such property as is exempt from execution, without specifying it, he is entitled to retain the amount allowed by statute in the case of execution.—Muhr v. Pinover, 67 Md. 480, 10 Atl. 289.

**§ 359. Rights as against assignee.***Cross-References.*

Liability for loss of property, see ante, § 261.

Existence of trust as affecting limitations, see "Limitation of Actions," § 102.

**§ 360. Rights as against third persons.***Cross-Reference.*

Effect of assignment on pending actions, see ante, § 189.

**§ 361. Composition with creditors.***Cross-References.*

Effect as estoppel to attack assignment, see ante, § 342.

Effect as revocation of assignment, see ante, § 50.

Right of creditor joining in composition agreement to require accounting by assignee, see post, § 365.

Composition agreements in general, see "Compositions with Creditors."

Effect of proceedings prior to bankruptcy, see "Bankruptcy," § 198.

**§ 362. Discharge.***Cross-References.*

Discharge of assignee, see post, § 404.

Effect of payment, see ante, § 322.

Releases by creditors, see ante, § 326.

Corporation as "person" within statute providing for discharge, see "Corporations," § 1.

**§ 363. Reversion of property on termination of trust.***Cross-References.*

Liability of assignee continuing assign-

or's business after payment of debts, see ante, § 236.

Effect of illegal contract with trustee on right to have property revert, see "Contracts," § 137.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## VII. ACCOUNTING, SETTLEMENT, AND DISCHARGE OF ASSIGNEE.

*Cross-References.*

Liability of assignee for acts in administration of estate, see ante, §§ 254-261.

Presentation, proof, and payment of claims of assignee against estate, see ante, § 313.

Settlement and discharge as affecting liabilities on assignees' bonds, see post, § 409.

Subrogation to right to accounting, see "Subrogation," § 7.

**§ 364. Duty to account in general.****§ 365. Who entitled to require accounting.***Cross-References.*

Operation and effect of setting aside assignment, see ante, § 356.

Who entitled to claim under assignment and participate in distribution, see ante, §§ 297, 298.

**§ 366. Who liable to account.****§ 367. Property to be included.****§ 368. (Omitted from the classification used herein.)****§ 369. Failure to account.****§ 370. Jurisdiction of courts.****§§ 371, 372, 373. Proceedings for intermediate action.****§§ 374, 375, 376. Proceedings for final settlement.****§ 377. Actions for accounting.***Cross-Reference.*

Limitations, see "Limitation of Actions," §§ 22, 60, 102.

**§§ 378-382. Charges.***Cross-References.*

Liability of assignee other than on accounting, see ante, § 261.

Interest on funds of estate, see ante, § 255.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 383. Credits.****§ 384.— In general.**

(a) A trustee for the benefit of creditors, who sells goods in his possession as trustee and thus increases the trust fund, cannot be held individually liable for a judgment in replevin for such goods recovered against him individually, on the ground that the goods were wrongfully held and sold by him.—Weil v. Lehmayr, 74 Md. 81, 21 Atl. 563.

**§ 385.— Payment of claims.**

(a) An assignee is entitled to be reimbursed for taxes paid by him on the trust estate with funds received from the assignor.—Devries v. Hiss, 72 Md. 560, 20 Atl. 131.

**§ 386.— Expenses and disbursements.***Cross-References.*

Priority of payment of expenses of assignment, see ante, § 310.

Rights of creditors to counsel fees from estate, see ante, § 318.

**§ 387.— Counsel fees and costs.***Cross-References.*

Attorney's fees and expenses of litigation as claim against estate, see ante, § 318.

Costs and expenses of accounting, see post, § 400.

Costs in actions by or against assignee, see ante, § 282.

Costs in actions in aid of assignment, see ante, § 295.

(a) Where trustees for the benefit of creditors were authorized to employ an attorney to go to London and take charge of and sell a branch of the business which was located there, and to pay the necessary expenses of such attorney, not exceeding \$1,500, from the estate, and by the attorney's efforts the business was sold for \$194,847.92, resulting in a net profit to the trust estate of more than \$52,000, an allowance to such attorney of 10 per cent. of the price obtained for the property should be reduced to 7 per cent.—National Bank of Baltimore v. Dulaney, 96 Md. 159, 53 Atl. 944; Dulaney v. National Bank of Baltimore, Id.; Marshall v. Same, Id.

(b) Where an eminent attorney was employed by trustees for the benefit of creditors to assist them in the settlement of an estate aggregating the sum of \$243,800, and

he rendered services during the entire period of the trust, which was extended several years, and was paid by the trustee \$1,250, a further allowance of \$10,000 was not excessive.—National Bank of Baltimore v. Dulaney, 96 Md. 159, 53 Atl. 944; Dulaney v. National Bank of Baltimore, Id.; Marshall v. Same, Id.

(c) The costs of an appeal reversing a judgment in favor of a trustee for the benefit of creditors in replevin against him individually, for his wrongful retention and sale of goods as trustee, should be paid out of the trust fund, where such costs were due to errors of the court below, and not to the trustee's wrongful act.—Weil v. Lehmayr, 74 Md. 81, 21 Atl. 563.

(d) It is error to charge an assignee with the cost of taking testimony relative to the payment of taxes by him on the trust property.—Devries v. Hiss, 72 Md. 560, 20 Atl. 131.

**§ 388.— After setting aside assignment.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 389. Compensation.****§ 390.— In general.***Cross-References.*

Debts due from assignee as set-off against commissions allowed, see ante, § 379.

Order fixing commissions, see post, § 397.

Priority of payment of expenses of administration, see ante, § 310.

Review of allowance, see post, § 399.

As claim against bankrupt's estate, see "Bankruptcy," § 317.

Construction of contract between assignor and assignee as question for jury, see "Contracts," § 176.

Interest on decree for compensation, see "Interest," § 22.

Limitations against recovery of excessive commissions, see "Limitation of Actions," § 24.

Validity of contract for compensation in addition to legal fees, see "Contracts," § 125.

**§ 391.— Commissions.***Cross-Reference.*

Extra allowance, see post, § 392.

(a) Where trustees for the benefit of creditors were allowed the usual commissions for the value of real estate sold in the settlement of the trust, the value of which amounted to over \$71,000, and the proceeds

of other property amounted to over \$250,000, an allowance of commissions at the rate of 2½ per cent. on such proceeds was reasonable and proper.—*National Bank of Baltimore v. Dulaney*, 96 Md. 159, 53 Atl. 944; *Dulaney v. National Bank of Baltimore*, Id.; *Marshall v. Same*, Id.

(b) When several sales are made at different times, the commissions of the trustee should be calculated upon each sale separately, and the sales are not to be treated as if made at one time.—*Goodburn v. Stevens*, 1 Md. Ch. 420.

### § 392.—Extra allowances.

#### *Cross-Reference.*

Amount of commissions in general, see ante, § 891.

### § 393.—Forfeiture or deprivation.

#### *Cross-Reference.*

Assignment superseded by assignor's bankruptcy, see "Bankruptcy," § 178.

(a) Where an assignment for the benefit of creditors is set aside because of fraud on the part of the assignor, the assignee is not entitled to his commissions.—*Slingluff v. Smith*, 76 Md. 558, 25 Atl. 674.

### § 394. Form and requisites of account.

### § 395. Objections and exceptions.

### § 396. Hearing or reference.

#### *Cross-References.*

Proceedings for distribution of assigned estate, see ante, § 319.

Costs of reference, see post, § 400.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 397. Order or decree.

#### *Cross-References.*

See ante, § 375.

Operation and effect, see post, §§ 402, 403.

(a) Where a trust estate for the benefit of creditors is being administered in the circuit court, and an auditor has been appointed to take and report on the accounts of the trustees, orders of the court fixing the commissions to be allowed by the auditor to the trustee, and the fees to be paid to attorneys for services rendered the estate, are not final after enrollment, and may be reviewed by the court on exceptions to the auditor's account.—*National Bank of Baltimore v. Dulaney*, 96 Md. 159, 53 Atl.

944; *Dulaney v. National Bank of Baltimore*, Id.; *Marshall v. Same*, Id.

### § 398. Opening or vacating.

### § 399. Review.

#### *Cross-References.*

See ante, § 397.

Courts invested with appellate jurisdiction, see "Courts," § 240.

### § 400. Costs and expenses.

#### *Cross-References.*

Allowance to assignee of costs and expenses of assignment, see ante, §§ 386, 387.

Costs of proceedings to remove assignee, see ante, § 212.

Interest on costs, see "Costs," § 159.

### § 401. Operation and effect.

### § 402.—In general.

#### *Cross-References.*

Discharge of assignee, see post, § 404.

Effect of adjudication in rights of assignee's sureties, see post, § 413.

### § 403.—Partial account.

### § 404. Discharge of assignee.

#### *Cross-References.*

As affecting liability on bond, see post, §§ 414, 415.

Discharge of assignor, see ante, § 362.

Discharge of sureties, see post, § 410.

Opening or vacating, see ante, § 398.

### § 405. Private accounting and settlement.

### § 406. Action to open or set aside settlement.

#### *Cross-Reference.*

Limitations, see "Limitation of Actions," § 37.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## VIII. LIABILITIES ON ASSIGNEES' BONDS.

### § 407. Nature and extent in general.

#### *Cross-Reference.*

Liability for costs on accounting, see ante, § 400.

### § 408. Property covered.

### § 409. Settlement and discharge of assignee.

### § 410. Discharge of sureties.

(a) In an action by a creditor against the sureties of a trustee for the benefit of creditors, to recover the amount of a claim al-



lowed by the court, the mere failure of plaintiff to use diligence in collecting the claim from the trustee cannot relieve the sureties.—*Taylor v. State*, 73 Md. 208, 20 Atl. 914, 11 L. R. A. 852.

**§ 411. Breach or fulfillment of condition.**

(a) The sureties of a trustee for the benefit of creditors are liable for his failure to pay over the amount allowed on a creditor's claim, which the trustee was employed as attorney to establish, if he was not also employed to collect the same, and made no separation of the fund in his hands.—*Taylor v. State*, 73 Md. 208, 20 Atl. 914, 11 L. R. A. 852.

**§ 412.** (Omitted from the classification used herein.)

**§ 413. Conclusiveness of adjudication against assignee.**

**§ 414. Summary remedies.**

**§ 415. Actions.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**ASSIGNS.**

*Cross-References.*

See "Assignments"; "Assignments for Benefit of Creditors"; "Bankruptcy"; "Insolvency."

Use of term in deeds, see "Deeds," § 123.

*Annotation.*

1 Words and Phrases, 577-582.

**ASSISTANCE.**

*Cross-References.*

See "Assistance, Writ of."

In making arrest, see "Arrest," §§ 63, 69.

In perpetration of crime, see "Criminal Law," §§ 59-82.

Of poor persons, see "Paupers," §§ 37-52

*Annotation.*

1 Words and Phrases, 583.

**ASSISTANCE, WRIT OF.**

*Scope-Note.*

[INCLUDES putting in possession of real property persons adjudged to be entitled thereto or purchasers thereof under orders or decrees in equitable actions; nature and scope of the remedy in general; in what cases, and to and against whom, and as to what property, it is allowed; issuance, requisites, and validity of writs of assistance; and execution and effect thereof.

[EXCLUDES writs of possession, and other remedies for enforcing judgments in actions to recover possession of specific real property (see "*Ejectment*," and other specific heads); writs of assistance incident to particular classes of proceedings, or to other remedies (see "*Mortgages*"; "*Receivers*"; and other specific heads); and duties and liabilities of officers in respect of issuance and execution of writs of assistance (see "*Sheriffs and Constables*," and other specific heads). For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Nature and scope of remedy.
- § 2. Grounds for application.
- § 3. Defenses or grounds for opposition.
- § 4. Persons entitled to writ.
- § 5. Persons against whom writ may issue.
- § 6. Property subject to writ.
- § 7. Jurisdiction to issue.
- § 8. Proceedings to procure.
- § 9. Issuance, form, and requisites.
- § 10. Vacating.

*Cross-References.*

Appellate jurisdiction as involving freehold, see "Courts," § 219.  
 For possession of property purchased at execution sale, see "Execution," § 280.  
 For possession of property purchased at foreclosure sale, see "Mortgages," § 544.  
 For possession of property purchased at judicial sale, see "Judicial Sales," § 51.  
 Mandamus to review order on application for writ, see "Mandamus," § 4.

Proceedings by as deprivation of right to trial by jury, see "Jury," § 19.  
 Right of grantee of purchaser at foreclosure sale to writ, see "Mortgages," § 553.  
 To enforce redemptioner's right of possession, see "Mortgages," § 624.  
 To put execution purchaser into possession, see "Execution," § 280.  
 Writ of possession to enforce judgment in ejectment, see "Ejectment," § 120.

**§ 1. Nature and scope of remedy.**

(a) Where a court of equity decrees a conveyance, and defendant refuses to obey the decree, a writ of injunction, to compel delivery of the possession, may be issued; and, if that be not obeyed, an *habere facias possessionem*.—*Garretson v. Cole*, 1 H. & J. 370. [Cited and annotated in 20 L. R. A. 169, on power to grant mandatory injunctions.]

**§ 2. Grounds for application.****§ 3. Defenses or grounds for opposition.****§ 4. Persons entitled to writ.****§ 5. Persons against whom writ may issue.****§ 6. Property subject to writ.****§ 7. Jurisdiction to issue.****§ 8. Proceedings to procure.**

(a) A writ of *habere facias possessionem*, under act 1825, c. 103 (Code, art. 75, § 93), ought not to issue unless it appears that, after the return of the *fi. fa.*, notice was given to the tenants in possession to show cause why the writ of *habere* should not issue.—*Waters v. Duvall*, 6 G. & J. 76.

**§ 9. Issuance, form, and requisites.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 10. Vacating.**

(a) The fact that an injunction has been granted in favor of a tenant against the issuance of a writ of *habere facias possessionem* will not prevent the tenant, after its dissolution, from moving to quash the writ on the ground that no notice had been served on him to show cause why the writ should not be issued.—*Waters v. Duvall*, 6 G. & J. 76.

(b) Where a tenant has been ejected by a writ of *habere facias possessionem*, he may, on its return, move the court to quash it for the purpose of awarding restitution, if it appears that no notice was given to the tenant to show cause why the writ should not issue.—*Waters v. Duvall*, 6 G. & J. 76.

**ASSOCIATED PRESS.***Cross-References.*

See "Newspapers," § 7.

Taxation of interest under contract with press association, see "Taxation," § 76.

Taxation of shares of stockholders, see "Taxation," § 169.

## ASSOCIATIONS.

*Scope-Note.*

[INCLUDES unincorporated associations in general; their nature, formation, and dissolution; rights, powers, duties, and liabilities of such bodies, their members and officers, as among themselves and as to others, incident to the existence of the association, and legal proceedings for enforcement thereof.

[EXCLUDES associations formed for a particular purpose or business (see specific heads); and unincorporated companies having a capital stock divided into transferable shares (see "*Joint-Stock Companies*"). For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Nature and status in general.
- § 2. Statutory provisions.
- § 3. Proceedings for organization.
- § 4. Name and seal.
- § 5. Constitution and by-laws.
- § 6. Membership.
- § 7. — In general.
- § 8. — Admission of members.
- § 9. — Withdrawal of members.
- § 10. — Expulsion, suspension, or exclusion of members.
- § 11. — Reinstatement of members.
- § 12. Dues, fines, and assessments.
- § 13. Dealings between members and association.
- § 14. Mutual dealings and liabilities of members.
- § 15. Property and funds of association.
- § 16. Liabilities of members for acts and debts of association.
- § 17. Meetings and elections.
- § 18. Officers and committees.
- § 19. Rights and liabilities of association as to persons not members.
- § 20. Actions by or against associations.
- § 21. Insolvency and receivers.
- § 22. Reorganization.
- § 23. Consolidation.
- § 24. Incorporation.
- § 25. Dissolution.
- § 26. Foreign associations.

*Cross-References.*

See "Banks and Banking," §§ 22-85; "Beneficial Associations"; "Building and Loan Associations"; "Cemeteries," § 5; "Clubs"; "Colleges and Universities"; "Exchanges"; "Joint-Stock Companies"; "Monopolies"; "Religious Societies"; "Trade Unions."

Actionable deceit in pretending corporate capacity, see "Fraud," § 13.

Bankruptcy proceedings against association, see "Bankruptcy," § 70.

Bar associations, see "Attorney and Client," § 31.

Best and secondary evidence of meetings and elections, see "Criminal Law," § 400.

Capacity to take as trustee of charitable gift, see "Charities," § 20.

Class legislation relating thereto, see "Constitutional Law," § 208.

Criminal responsibility for illegal sale of intoxicating liquors, see "Intoxicating Liquors," § 172.

Defective associations as partnerships, see "Partnership," § 41.

Designation in will, see "Wills," § 514.

Disqualification of member as juror in suit in which association is a party, see "Jury," § 88.

Effect of release of subscriber on contract liability of association, see "Release," § 28.

Embezzlement by officers, see "Embezzlement," § 44.

Irrigation associations, see "Waters and Water Courses," § 238.

Judicial notice of associations and members thereof, see "Evidence," § 22.

Jurisdiction of federal courts dependent on citizenship or residence, see "Courts," § 315.

Liability of associations and property to taxation, see "Taxation," §§ 112-171½.

Libelous and slanderous imputations concerning officers of associations, see "Libel and Slander," § 10.

Mandamus to compel reinstatement of member, see "Mandamus," § 125.

Mandamus to control acts and proceedings of associations, see "Mandamus," §§ 122-140.

Master car builders' associations, see "Railroads," § 116.

Medical societies, see "Physicians and Surgeons," § 9.

Multifariousness of bill seeking reinstatement of member and recovery of benefits, see "Equity," § 148.

Mutual benefit insurance associations, see "Insurance," §§ 687-710.  
 Police benefit associations, see "Municipal Corporations," § 187.  
 Political party organizations, see "Elections," § 121.  
 Societies for custody and protection of children, see "Infants," § 17.

Societies for prevention of cruelty to animals, see "Animals," § 39.  
 State or county fair associations, see "Agriculture," §§ 4, 5.  
 Subject to liquor license or tax, see "Intoxicating Liquors," § 50.  
 Validity of resolution passed on Sunday, see "Sunday," § 9.

## § 1. Nature and status in general.

(a) Employers may combine in associations for lawful purposes, but must employ lawful methods for the attainment of such purposes.—*Willner v. Silverman*, 109 Md. 341, 71 Atl. 962.

## § 2. Statutory provisions.

### *Cross-References.*

Class legislation, see "Constitutional Law," § 208.  
 Implied repeal by re-enactment of provisions, see "Statutes," § 166.  
 Re-enactment or revival of act repealed, see "Statutes," § 170.  
 Subject and title of act relating to societies to secure adoption of children, see "Statutes," § 113.  
 Subjects and titles of acts for incorporation, see "Statutes," § 113.

## § 3. Proceedings for organization.

## § 4. Name and seal.

## § 5. Constitution and by-laws.

### *Cross-Reference.*

Adoption as question for jury, see post, § 20.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## §§ 6, 7, 8, 9, 10, 11. Membership.

### *Cross-References.*

Constitution and by-laws, see ante, § 5.  
 Rights of ex-members as to property and funds, see post, § 15.  
 Expulsion from trade union, see "Trade Unions," § 4.  
 Multifariousness of bill seeking reinstatement of member and recovery of benefits, see "Equity," § 148.  
 Mandamus to control admission or expulsion of members, see "Mandamus," §§ 124, 125.

## § 12. Dues, fines, and assessments.

## § 13. Dealings between members and association.

## § 14. Mutual dealings and liabilities of members.

## § 15. Property and funds of association.

### *Cross-References.*

Embezzlement, see "Embezzlement," § 44.

On dissolution, see post, § 25.

Assumpsit for bonds in hands of former members, see post, § 20.

## § 16. Liabilities of members for acts and debts of association.

(a) Where any organization of persons is represented by a select body of its own members, unless there be something in its rules, or in the delegation of authority, to the contrary, the act of the majority is to be taken as the act of the whole.—*Wehr v. German Evangelical Lutheran St. Matthew's Congregation*, 47 Md. 177.

## § 17. Meetings and elections.

### *Cross-References.*

Validity of resolution passed on Sunday, see "Sunday," § 9.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 18. Officers and committees.

### *Cross-References.*

Election, see ante, § 17.

Election as constituting persons a "voluntary association," see ante, § 1.

Embezzlement, see "Embezzlement," § 44.

(a) The fact that the president and several members of an association signed a petition asking that authority might be granted for the defendant corporation to build an elevated railway will not, in the absence of anything to show that the signers had power to bind the association or had assumed to act for it, estop it from claiming damages for injuries to its property caused by the construction of the road.—*Lake Roland El. Ry. Co. v. Hibernian Soc.*, 83 Md. 420, 34 Atl. 1017.

## § 19. Rights and liabilities of association as to persons not members.

### *Cross-References.*

See "Monopolies," § 24.

Effect of release of subscriber on contract liability of association, see "Release," § 28.

## § 20. Actions by or against associations.

### *Cross-References.*

Against foreign associations, see post, § 26.

For expulsion and for reinstatement of member, see ante, §§ 10, 11.

On official bonds, see ante, § 18.

Statutory provisions, see ante, § 2.

Jurisdiction of federal courts dependent on citizenship or residence, see "Courts," § 315.

Mandamus, see "Mandamus," §§ 122-140.

Removal of cause, see "Removal of Causes," § 79.

Action by part of members on behalf of all, see "Parties," § 12.

(a) Members of an unincorporated association may sue for libel as individuals having a common interest in the business injuriously affected thereby.—*National Shutter Bar Co. v. C. F. S. Zimmerman & Co.*, 110 Md. 313, 78 Atl. 19.

(b) Under Code, 1888, art. 23, § 301, providing that it shall be sufficient, in any suit against a joint-stock company or association, to describe it by the name under which its business is transacted, an unincorporated association may be sued by its association name.—*Littleton v. Wells and McComas Council*, No. 14, J. O. U. A. M., 98 Md. 453, 56 Atl. 798. (See Code 1911, art. 23, § 88.)

(c) Under act 1868, c. 471, § 215 (Code 1888, art. 23, § 301), it is sufficient, in a suit by or against an association, to describe

it by the name or title by which its business is transacted.—*Powhatan Steamboat Co. v. Potomac Steamboat Co.*, 36 Md. 238. (See Code 1911, art. 23, § 88).

(d) Although a voluntary association cannot sue in a corporate capacity, yet members of the association may sue as such.—*Mears v. Moulton*, 30 Md. 142.

## § 21. Insolvency and receivers.

### *Cross-References.*

Service of process, see ante, § 20.

Implied repeal by re-enactment of statute relating thereto, see "Statutes," § 166.

## § 22. Reorganization.

## § 23. Consolidation.

## § 24. Incorporation.

## § 25. Dissolution.

### *Cross-Reference.*

Implied repeal by re-enactment of statute relating thereto, see "Statutes," § 166.

## § 26. Foreign associations.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

~~See~~

## ASSUMED NAME.

### *Cross-Reference.*

Illegality of contract of persons doing business under assumed name as affecting right to recover on implied agreement, see "Work and Labor," § 10.

# ASSUMPSIT, ACTION OF.

### *Scope-Note.*

[INCLUDES actions of assumpsit, as distinguished from other forms of action; nature and scope of the remedy in general; grounds of such actions and defenses thereto; by and against whom they may be maintained, proceedings therein; review of proceedings; and costs in such actions.

[EXCLUDES implied and constructive contracts or quasi contracts on which the action may be maintained (see "Contracts"; "Work and Labor"; "Use and Occupation"; "Sales"; "Money Lent"; "Money Paid"; "Money Received"; "Account Stated"; "Contribution"); and distinctions between forms of action (see "Action"), and election between remedies (see "Election of Remedies"). For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

- § 1. Nature and scope of remedy.
- § 2. Statutory provisions.
- § 3. Grounds.
- § 4. — In general.

- § 5. — Common counts.
- § 6. — Express contract.
- § 7. — Implied promise.
- § 8. — Tort.
- § 9. — Demand.
- § 10. Defenses.
- § 11. Persons entitled to sue.
- § 12. Persons liable.
- § 13. Jurisdiction and venue.
- § 14. Time to sue and limitations.
- § 15. Parties.
- § 16. Process and appearance.
- § 17. Pleading.
- § 18. — In general.
- § 19. — Declaration.
- § 20. — Plea or affidavit of defense.
- § 21. — Replication and subsequent pleadings.
- § 22. — Amendment.
- § 23. — Issues, proof, and variance.
- § 24. — Defects, objections, and aid by verdict or judgment.
- § 25. Evidence.
- § 26. Damages.
- § 27. Trial.
- § 28. — Conduct in general.
- § 29. — Questions for jury.
- § 30. — Instructions.
- § 31. — Verdict.
- § 32. Judgment.
- § 33. Review.
- § 34. Costs.

### *Cross-References.*

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| <p>Election of other remedy, see "Election of Remedies," § 3.</p> <p>Following state statutes and practice in federal courts, see "Courts," § 342.</p> <p>For breach of contract of sale, see "Vendor and Purchaser," § 342.</p> <p>For breach of contract to marry, see "Breach of Marriage Promise," § 14.</p> <p>For compensation of broker, see "Brokers," § 79.</p> <p>For enforcement of award of arbitrators, see "Arbitration and Award," § 85.</p> <p>For enforcement of bills and notes, see "Bills and Notes," § 448.</p> <p>For enforcement of contribution between co-sureties, see "Principal and Surety," § 200.</p> <p>For enforcement of municipal assessment, see "Municipal Corporations," § 586.</p> <p>For enforcement of payment of license fees or taxes, see "Licenses," § 32.</p> <p>For enforcement of stockholder's liability, see "Corporations," § 259.</p> | <p>For expense of supporting pauper, see "Paupers," § 52.</p> <p>For injuries from negligence or default in transmission or delivery of telegraph or telephone message, see "Telegraphs and Telephones," § 59.</p> <p>Forms of action in justice's court, see "Justices of the Peace," § 67.</p> <p>For recovery of mesne profits after recovery on writ of entry, see "Entry, Writ of," § 24.</p> <p>For recovery of money collected by agent, see "Principal and Agent," § 78.</p> <p>For recovery of payments, see "Payment," §§ 80-89.</p> <p>For recovery of price of goods sold and delivered, see "Sales," §§ 340-368.</p> <p>For recovery of property claimed by trustee in bankruptcy, see "Bankruptcy," § 287.</p> <p>For recovery of rent, see "Landlord and Tenant," § 217.</p> <p>For support of prisoners, see "Prisons," § 18.</p> |
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Joinder of causes of action, see "Action," §§ 38-60.

Particular implied contracts as grounds of action, see "Account Stated"; "Money Lent"; "Money Paid"; "Money Received"; "Work and Labor."

Payment of obligation in general, see "Payment."

Right to body execution, see "Execution," § 423.

Waiver of tort and suit in assumpsit, see "Action," § 28.

### § 1. Nature and scope of remedy.

(a) An action of assumpsit lies for work done and materials furnished under contracts, one of which was under seal, where it appears that there was nothing due on the contract under seal when suit was brought.—*Meyer v. Frenkil*, 113 Md. 36, 77 Atl. 369.

(b) An action of assumpsit does not lie for the recovery of damages on an instrument under seal.—*Fry v. Talbott*, 106 Md. 43, 66 Atl. 664.

(c) The remedy of a witness for a refusal of the county commissioners to pay his fees is not in assumpsit, but by mandamus.—*Hall v. Somerset County Com'rs*, 82 Md. 618, 34 Atl. 771.

### § 2. Statutory provisions.

### § 3. Grounds.

### § 4.—In general.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 5.—Common counts.

#### Cross-References.

Recovery of value of property taken on waiver of tort under common counts, see post, § 8.

Broker's commissions, see "Brokers," § 79.

(a) Where a special contract has been terminated by defendant, or its performance prevented by him, plaintiff may recover under the common counts what is due for so much of his contract as has been performed; but, where there is a subsisting special contract the performance of which has not been waived or prevented by defendant, plaintiff cannot recover on the common counts for its part performance.—*Meyer v. Frenkil*, 113 Md. 36, 77 Atl. 369.

(b) Where a promisee has performed his part of the contract, and nothing remains to be done but the payment of the money by the promisor, there may be a recovery in indebitatus assumpsit, and it is not neces-

sary to declare on the special contract.—*Young v. Boyd*, 107 Md. 449, 69 Atl. 33.

(c) A declaration in assumpsit contained only the common counts, whereas the bill of particulars disclosed a special contract. *Held*, that, where the proof showed that plaintiff had fully performed his part of the contract, the declaration was sufficient.—*Southern Building & Loan Ass'n v. Price*, 88 Md. 155, 41 Atl. 53, 42 L. R. A. 206.

(d) Where a special contract has been fully executed, and nothing remains to be done but pay money, recovery may be had on the common counts.—*Coursey v. Covington*, 5 H. & J. 45; *Speake v. Sheppard*, 6 H. & J. 81; *Causten v. Burke*, 2 H. & G. 295, 18 Am. Dec. 297; *Ridgeley v. Crandall*, 4 Md. 435; *Ellicott v. Peterson*, 4 Md. 476; *Devecmon v. Shaw*, 69 Md. 199, 14 Atl. 464, 9 Am. St. Rep. 422.

(e) Where one party to a special contract, by a rescission or otherwise, prevents the other from performing it, the latter may abandon the contract, and recover on the common counts.—*Bull v. Schuberth*, 2 Md. 38.

(f) Where the directors of a railroad company declared a dividend payable in cash to stockholders having less than 50 shares, and payable partly in cash and partly in bonds to stockholders having more than 50 shares, a stockholder of the latter class, who refuses to accept the bond portion of the dividend, cannot maintain indebitatus assumpsit to recover its value in cash.—*State v. Baltimore & O. R. Co.*, 6 Gill 363.

(g) An admission of the defendant, in conversation, to a third person, not the plaintiff's agent, is not sufficient to sustain a count upon an insimul computassent.—*Hoffar v. Dement*, 5 Gill 132, 46 Am. Dec. 628. [Cited and annotated in 27 L. R. A. 815, on what constitutes account stated.]

(h) Under the provisions of different acts of assembly, assumpsit will lie in Maryland as well for tobacco as current money, when

the contract is for payment in tobacco.—*Marshall v. McPherson*, 8 G. & J. 333.

(i) *Indebitatus assumpsit* will not lie on a collateral undertaking. The count must be special, but where it is an original undertaking or promise, the proper remedy is the action of *indebitatus assumpsit*. Whether a promise is collateral or original depends upon the liability of the party undertaken for, and this in turn depends upon the further question, to whom was the credit given?—*Elder v. Warfield*, 7 H. & J. 391. [Cited and annotated in 15 L. R. A. (N. S.) 217, 221, on oral contemporary promise to pay where benefit inures to another.]

(j) General *indebitatus assumpsit* will not lie to recover the value of produce, or damages for not delivering it where the entire contract is to deliver certain quantities of produce in return for services.—*Coursey v. Covington*, 5 H. & J. 45.

(k) Where, upon the formation of a partnership, one partner advanced money upon the promise of each of the other two partners to repay him one-third thereof on the dissolution of the partnership exclusive of his share of the profits, and whether or not there should be a profit or loss in the business, the undertaking is one distinct from the partnership, and may be enforced in a court of law by an action of general *indebitatus assumpsit*, and the special contract need not be declared upon.—*Roache v. Pendergast*, 3 H. & J. 33.

(l) Where there is a special contract outstanding, plaintiff cannot recover on the common counts.—*Hannan v. Lee*, 1 H. & J. 131.

### § 6.—Express contract.

#### Cross-References.

Common counts on express contract, see ante, § 5.

Tort or contract, see post, § 8.

Assumpsit on award on submission under seal, see "Arbitration and Award," § 85.

(a) Assumpsit will lie for breach of contract for sale of land made by an agent, though it professes to be sealed by the agent by her own seal, as this may be treated as surplusage; the agent having no authority to bind the principal by a sealed contract.—*Horner v. Beasley*, 105 Md. 193, 65 Atl. 820.

(b) A suit in general assumpsit may be maintained to recover compensation for services rendered under a contract, but in such case the contract fixes the measure of recovery.—*Gambrill v. Schooley*, 89 Md. 546, 43 Atl. 918.

(c) Assumpsit will not lie on a policy of insurance under seal.—*Firemen's Ins. Co. v. Floss*, 67 Md. 403, 10 Atl. 139.

(d) Assumpsit lies on parol contracts modifying or extending the terms of a sealed policy of insurance.—*Mutual Ins. Co. v. Deale*, 18 Md. 26, 79 Am. Dec. 673; *Fireman's Ins. Co. v. Floss*, 67 Md. 403, 10 Atl. 139.

(e) An action of assumpsit cannot be maintained to recover a sum of money promised to be loaned.—*Conway v. Log Cabin Permanent Bldg. Ass'n*, 52 Md. 136.

(f) In whatever instances an action of covenant is maintainable for the breach of the covenant comprised in a deed of co-partnership, in the same instances an action of assumpsit can be sustained if the partnership, instead of being constituted by deed, was contracted verbally or by writing only.—*Wadsworth v. Manning*, 4 Md. 59. [Cited and annotated in 25 L. R. A. (N. S.) 960, on arbitrary or mala fide termination of partnership as basis of tort action.]

(g) If a condition precedent in a deed is not performed, and the parties proceed with the performance of the other parts of the contract, although the deed cannot take effect so as to authorize an action of covenant, the law will raise an implied assumpsit, upon which an action of assumpsit can be maintained.—*Ridgeway v. Toram*, 2 Md. Ch. 303.

(h) A. covenanted with B. to build and complete a certain house, according to specifications, for a specified price, within a specified time; and the parties further covenanted that, in case B. directed any more work to be done than was mentioned, he should pay to A. what it should be worth on a reasonable valuation. *Held*, that covenant, and not assumpsit, was the proper form of action in order to recover for the extra work.—*Ramsburg v. McCahan*, 3 Gill 341.



(i) An action of assumpsit cannot be maintained, in Maryland, upon a single bill made in Virginia, which, according to the laws of the latter state, is not a specialty, but is according to the laws of the former state.—*Trasher v. Everhart*, 3 G. & J. 234.

### § 7.—Implied promise.

#### *Cross-Reference.*

See "Action," § 28.

(a) Where the state by legislative enactment has imposed taxes, and no other mode of enforcement is prescribed, an action of assumpsit will lie, on the principle that, where the law gives a claim to one against another, it raises an implied assumpsit on the legal obligation to pay.—*Appeal Tax Court of Baltimore City v. Patterson*, 50 Md. 354.

(b) Assumpsit will lie to collect a paving tax imposed by a city where no particular remedy is given, on the principle that where the law gives a claim to one against another it raises an implied obligation to pay.—*Dashiell v. City of Baltimore*, 45 Md. 615. [*Cited and annotated in 35 L. R. A. 60, on personal liability to pay assessment for local improvement.*]

(c) Where a statute authorizes the imposition of a tax, recovery thereon may be had in assumpsit, whether the law provides any other remedy for its collection or not.—*City of Baltimore v. Howard*, 6 H. & J. 383.

(d) Where an agreement does not designate the person to whom its consideration is to be paid, the law will raise an assumpsit; and this is always implied in favor of those who are the meritorious cause of action, or from whom the consideration moves.—*Higdon v. Thomas*, 1 H. & G. 138.

### § 8.—Tort.

#### *Cross-References.*

Levy on bankrupt's assets, see "Bankruptcy," § 305.

Pleading former suit in assumpsit in action for conversion, see "Trove and Conversion," § 33.

Waiver of tort, and suit in assumpsit, see "Action," § 28.

(a) Where a debtor mortgages chattels to a creditor, and subsequently deeds them in trust for creditors to one who sells them and receives the purchase money, the tort may

be waived, and assumpsit brought by the creditor for money had and received.—*Leighton v. Preston*, 9 Gill 201.

(b) A conversion involving merely a detention of personalty, without a sale or a conversion of the property into money or money's worth, will authorize a waiver of the tort and a suit in assumpsit.—*Stockett v. Watkins*, 2 G. & J. 326, 20 Am. Dec. 438.

(c) If A. purchases goods of B., and pays him the purchase money, and B. afterwards takes the goods in possession, the proper remedy is trover, and A. cannot support assumpsit against B. to recover back the purchase money.—*Kirwan v. Raborg*, 1 H. & J. 296.

### § 9.—Demand.

### § 10. Defenses.

#### *Cross-Reference.*

Waiver of formality to perfect mechanic's lien as affecting recovery in assumpsit, see "Mechanics' Liens," § 253.

(a) In assumpsit to recover the sum awarded to be paid by the defendant to the plaintiff by commissioners appointed to divide real estate, it is no defense that another party to the division is wholly insolvent.—*Ridgeley v. Crandall*, 4 Md. 435.

### § 11. Persons entitled to sue.

#### *Annotation.*

Right of mortgagor or owner of equity of redemption to maintain action for money had and received for surplus received by mortgagee on sale of property.—44 L. R. A. (N. S.) 1041, note.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 12. Persons liable.

(a) Assumpsit will lie against a corporation, founded on its acts done within the legitimate purposes of its institution.—*In re Cape Sable Co.*, 3 Bland 606.

### § 13. Jurisdiction and venue.

#### *Gross-References.*

Jurisdiction dependent on amount or value in controversy, see "Courts," §§ 120, 121, 122.

Jurisdiction of justices of the peace, see "Justices of the Peace," § 46.

### § 14. Time to sue and limitations.

#### *Cross-Reference.*

Limitations applicable, see "Limitation of Actions," §§ 27, 28.

(a) In assumpsit, when plaintiff files a replication to the plea of limitations, and defendant joins issue thereon, any irregularity as to time of filing the plea is thereby waived.—*Stockett v. Sasscer*, 8 Md. 374.

(b) In assumpsit, the defendants pleaded the statute of limitations. The plaintiffs replied that they were persons beyond the seas. The defendants rejoined the statute of limitations of 21 James I c. 16 (Alex. Brit. Stat. [Coe's ed.] 599). The plaintiff demurred, and the demurrer was held good.—*Langkopff v. West*, 3 H. & McH. 197.

(c) In an action against executors to account for profits of land which their testator held as guardian and bailiff for plaintiff during his minority, a plea that plaintiff became of age on a certain day, after which three years had elapsed before commencing the action, is insufficient, on demurrer, as a plea of the statute of limitations.—*Perkins v. Turner*, 1 H. & McH. 400.

#### § 15. Parties.

#### § 16. Process and appearance.

#### § 17. Pleading.

#### *Cross-References.*

In justices' court, see "Justices of the Peace," §§ 90-101.

Joining count in tort with implied contract, see "Money Received," § 17.

#### § 18.— In general.

#### § 19.— Declaration.

#### *Cross-References.*

Common counts, see ante, § 5.

Rule of court as to notice of filing of statement, see "Courts," § 80.

Sufficiency to sustain default judgment, see "Judgment," § 101.

(a) Where the instrument itself, which is the cause of action in assumpsit, and the averments of the narr., show that the debt was a money debt, and that it was due before the commencement of the suit, it is not necessary under Code, art. 75, § 24, to aver in the narr., "for money payable by the defendants to the plaintiff."—*Tradesmen's Nat. Bank v. Green*, 57 Md. 602.

(b) There is no such thing as a count for "money found to be due on amount stated," nor will such a count be treated "for money found to be due on account stated."—*Penniman v. Winner*, 54 Md. 127.

(c) Counts which alleged the letting by the plaintiff to the defendant of certain tenements described, at \$12 per month, and the occupation thereof by the defendant for the period mentioned, and alleged the amount due on account of said rental, are counts in assumpsit, within Code, art. 75, § 24, dispensing with the allegation of a promise to pay by the defendant.—*Swem v. Sharretts*, 48 Md. 408.

(d) In assumpsit, the declaration contained the common money counts, and a count on an account stated. Defendant, without pleading, demanded a bill of particulars, which, being furnished, showed that plaintiff sought to recover back the excess of interest over and above the legal rate which he had paid to defendant on two several loans. Defendant then filed a general demurrer to the declaration. *Held*, that the effect of the bill of particulars was to show plaintiff's entire cause of action under all the counts of his declaration, and the effect of the demurrer was to admit the cause of action as stated in the bill of particulars, and to deny that it furnished any ground of action.—*Scott v. Leary*, 34 Md. 389.

(e) A count, in a declaration, "for money found due from said defendant on account stated," is defective, because it fails to state that the money was due to the plaintiff, and because it omits an averment showing between whom the account was stated.—*Merryman v. Rider*, 34 Md. 98.

(f) The omission to prefix the averment, "For money payable by the defendant to the plaintiff," to the common counts in a declaration in indebitatus assumpsit, is fatal on demurrer.—*Merryman v. Rider*, 34 Md. 98.

(g) In an action of assumpsit for money promised, if the plaintiff would forbear contesting a will, he must allege that the testator left assets more than sufficient to pay his debts; and the declaration must show that the forbearance promised was a detriment to the plaintiff or a benefit to the defendant.—*Busby v. Conoway*, 8 Md. 55, 63 Am. Dec. 688. [*Cited and annotated in 15 L. R. A. 440, on validity of compromise of unfounded claim; in 25 L. R. A. (N. S.) 306, on void, invalid, or unfounded claim as subject to valid compromise.*]

(h) In an action of assumpsit to recover upon an account by one to whom it has been assigned, it is not necessary that the plaintiff allege in his declaration a promise by the defendant to pay the account.—*Crawford v. Brooke*, 4 Gill 218.

(i) Where plaintiff's demand is set forth in a general count, defendant may, at any time before he has pleaded to the merits, call on plaintiff to exhibit the particulars of his claim.—*Randall v. Glenn*, 2 Gill 430.

(j) A declaration which contains a count for matters and articles properly chargeable in account, as appears by a particular account filed, no account being filed, and another count for special services, which did not state an assumption of any particular sum, will not authorize a recovery.—*Turner v. Jenkins*, 1 H. & G. 161.

(k) In assumpsit, the declaration must aver consideration for the promise.—*Chandler v. State*, 5 H. & J. 284.

(l) If prior counts set forth the consideration of the promise, and the last count refers to them, and is founded on the consideration alleged in them, it is sufficient.—*Dent v. Scott*, 3 H. & J. 28.

#### § 20.—Plea or affidavit of defense.

(a) The plea that defendant was "never indebted as alleged" is applicable to the common counts in assumpsit, and under Code, art. 75, § 24, sub-section 41, providing that the same plea shall be sufficient in an action on a simple contract, a plea that defendant never was indebted as alleged in an answer to a complaint in assumpsit is not demurrable.—*Fisher v. Diehl*, 94 Md. 112, 50 Atl. 432.

(b) Under act 1886, c. 184 (Balto. City Code, § 312), amending the act of 1864, an affidavit in assumpsit, stating that defendant "does not admit any of the plaintiff's claim to be due and owing," is insufficient.—*Baltimore Pub. Co. v. Hooper*, 76 Md. 115, 24 Atl. 452.

(c) Under act 1886, c. 184, § 170 (Balto. City Code, § 312), amending the act of 1864, relating to the practice in Baltimore city, so as to provide that an affidavit of defense "shall further state the amount of

plaintiff's demand, if anything, admitted to be due and owing, and the amount disputed," an affidavit in assumpsit, which merely sets out that defendant never promised as alleged, nor ever was indebted as alleged, and filing such pleas, is insufficient.—*Adler v. Crook*, 68 Md. 494, 13 Atl. 153.

(d) A release, coverture, infancy, or payment may be pleaded specially in assumpsit, though any of these matters may be given in evidence under a plea of non-assumpsit.—*Barr v. Perry*, 3 Gill 313.

#### § 21.—Replication and subsequent pleadings.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 22.—Amendment.

(a) Where the declaration in attachment is in assumpsit, and the causes of action are sealed instruments, the defect can be cured by amendment.—*De Bebian v. Gola*, 64 Md. 262, 21 Atl. 275.

(b) An amendment of the writ and narr. so as to change them from covenant to assumpsit may, under Acts 1852, c. 177 (Code, art. 75, § 35), be allowed to be made at the trial.—*Baltimore Fire Ins. Co. v. McGowan*, 16 Md. 47.

(c) On paying costs, a party may amend from assumpsit to trover.—*Kirwan v. Ro-borg*, 1 H. & J. 296.

#### § 23.—Issues, proof, and variance.

(a) A defendant in assumpsit who pleads the general issue to the declaration containing the common counts and a special count alleging a contract of employment may show the non-existence of any indebtedness at any time.—*Huff v. Simmers*, 114 Md. 548, 79 Atl. 1003.

(b) A defendant in assumpsit who pleads the general issue to the declaration containing the common counts and a special count alleging a contract of employment may prove payment in whole or in part of any indebtedness which may have existed.—*Huff v. Simmers*, 114 Md. 548, 79 Atl. 1003.

(c) In an action for money loaned, money had and received, money due plaintiff on account stated, and, as alleged in a special count, for money due on a written contract

between plaintiff and defendant in reference to the management of a certain business, defendant pleaded never indebted, payment, set-off, and an account in bar. Defendant proved that the business under the original contract had been greatly enlarged by parol agreements, so as to include hotel keeping and other business, the incurring of heavy expense, the remittance of the net cash to plaintiff, the charge in plaintiff's account of the articles furnished to carry on the business, the payment of a portion of the expenses from sale of goods and a portion out of defendant's funds, and that it was all done by the authority of plaintiff. *Held*, that it was error to grant a prayer excluding from the jury all consideration of the account in bar, and all evidence connected with it, and to reject evidence offered to prove the same.—*Stallings v. Gottschalk*, 77 Md. 429, 26 Atl. 524.

(d) As a general principle, in actions of assumpsit anything which shows that the plaintiff has no subsisting cause of action may be given in evidence under the plea of the general issue.—*Herrick v. Swomley*, 56 Md. 439.

(e) Under a common indebitatus assumpsit, evidence admissible under a quantum meruit or quantum valebat may be given in favor of the defendant in spite of the fact that he has filed no plea of set-off.—*Carroll v. Quynn*, 13 Md. 379.

(f) Where an action is brought by one of several with whom the contract was made, the defendant may take advantage of the non-joinder of the others upon evidence produced at the trial, upon the plea of non assumpsit.—*Hoffar v. Dement*, 5 Gill 132, 46 Am. Dec. 628.

(g) Where the plaintiff declares on the common counts and an account annexed, he may, at the trial, on the general issue, abandon the account, and give evidence of other matters not included therein.—*Carter v. Tuck*, 3 Gill 248.

(h) Evidence of a set-off is not admissible under the general issue in assumpsit.—*Sangston v. Maitland*, 11 G. & J. 286.

(i) In assumpsit by principals for the price

of goods sold for them by factors, the vendees (defendants) cannot, under plea of the general issue, show that the factors agreed to receive in payment their own notes usuriously discounted by defendants.—*Sangston v. Maitland*, 11 G. & J. 286.

(j) In assumpsit, where the declaration contained only the money counts, under the general issue it is no variance for the plaintiff to give in evidence a promissory note made payable to him by a firm of which defendant was a partner.—*Neal v. Fisher*, 2 H. & G. 274.

(k) If all the members of a partnership are not named as plaintiffs, the defendant may avail himself of the objection upon non assumpsit.—*Mitchell v. Dall*, 2 H. & G. 159.

(l) Where the plaintiff counts generally, and also specially, and fails to prove the special contract, he may recover on the common counts.—*Speake v. Sheppard*, 6 H. & J. 81.

(m) A variance between the proof and the allegations of special counts in an action of assumpsit will bar a recovery upon the common counts.—*Watkins v. Hodges*, 6 H. & J. 38; *Speake v. Sheppard*, *Id.* 81.

(n) Where one agrees to pay another a certain sum of money and a certain amount of produce for his services, and the declaration is only for money, the plaintiff cannot recover the value of the produce.—*Coursey v. Covington*, 5 H. & J. 45.

(o) Where plaintiff declares on a special contract, the proof and allegations must correspond.—*Walsh v. Gilmor*, 3 H. & J. 383, 6 Am. Dec. 503.

(p) If plaintiff in assumpsit files an account in court containing the items of his claim against the defendant, he is precluded from going into evidence to establish his claim in a manner different from that in which he has elected by his account to consider the defendant his debtor.—*De Sobry v. De Laistre*, 2 H. & J. 191, 3 Am. Dec. 535.

(q) A tender of bills of credit, under act 1777, c. 9, may be given in evidence, under the plea of non assumpsit.—*Dunlop v. Funk*, 3 H. & McH. 318.

## § 24.— Defects, objections, and aider by verdict or judgment.

(a) After verdict in assumpsit by an administrator, a defective allegation, in the declaration, of the promise to the administrator, and the death of the intestate, and an omission to make profert of the letters of administration, cannot be taken advantage of, though they might have furnished good cause of demurrer.—*Vandersmith v. Washmein*, 1 H. & G. 4.

## § 25. Evidence.

### *Cross-Reference.*

Testimony as to transactions with persons since deceased, see "Witnesses," § 139.

(a) In an action of assumpsit in consideration of forbearance to sue on a bond dated in 1793, and payable in 1798, whereby the bond became barred by limitations, evidence held sufficient to support the action.—*Veasey's Adm'r v. Bassett's Adm'rs*, 7 H. & J. 461.

## § 26. Damages.

### *Cross-Reference.*

From levy on bankrupt's assets, see "Bankruptcy," § 305.

## § 27. Trial.

### *Cross-Reference.*

Sufficiency of findings of court, see "Trial," § 395.

## § 28.— Conduct in general.

## § 29.— Questions for jury.

## § 30.— Instructions.

(a) A charge, that if the jury find that there was a contract for materials to be furnished and work done by plaintiff for defendant for a special sum, and that other materials in question were furnished and other work done by plaintiff for defendant, they must find for plaintiff for the sum, if any, due under the contract, was erroneous as allowing a recovery in general assumpsit where plaintiff has not performed his part of the contract, without submitting the questions whether his failure was due to defendant's fault, or whether the work actually done was accepted by defendant.—*Meyer v. Frenkil*, 113 Md. 36, 77 Atl. 369.

## § 31.— Verdict.

### *Cross-Reference.*

Amount of recovery in general, see "Trial," § 333.

## § 32. Judgment.

### *Cross-References.*

Conditions on opening or setting aside default, see "Judgment," § 167.

Excuses for default, see "Judgment," § 143.

Final judgment after default, see "Judgment," § 128.

On default in pleading, see "Judgment," § 106.

Sufficiency of pleading to sustain default judgment, see "Judgment," § 101.

Time for application to open default, see "Judgment," § 153.

(a) In assumpsit on a contract for the payment of tobacco, judgment may be recovered for the value of the tobacco in money.—*Lyles v. Lyles*, 6 H. & J. 273.

## § 33. Review.

## § 34. Costs.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in *Decennial and Key Number Digests*, and references therein to *Century Digest*.

## ASSUMPTION.

### *Cross-References.*

As to facts by trial court in instructing jury, see "Criminal Law," § 761; "Trial," §§ 191, 192.

As to facts in cross-examining witness, see "Witnesses," § 281.

As to facts in examining witness, see "Witnesses," § 237.

By firm of debts of partner, see "Partnership," § 73.

By receiver of obligations, see "Receivers."

Definition, see "Contracts," § 159.

Of agency without authority, see "Principal and Agent," § 149.

Of debt by purchaser of mortgaged property, see "Chattel Mortgages," § 226; "Mortgages," §§ 280-285.

Of debt creating relation of principal and surety, see "Principal and Surety," § 14.

Of debt of grantor by grantee, as affecting validity of conveyance as to creditors of grantor, see "Fraudulent Conveyances," §§ 55, 84.

Of incumbrances by purchaser as payment of price of land, see "Vendor and Purchaser," § 181.

Of liability as consideration for contract, see "Contracts," § 66.

Of risk, applicability of doctrine to accidents at crossings, see "Railroads," § 351.

Of risk by employee, see "Master and Servant," §§ 203-226.

Of risk, nature of doctrine in general, see "Negligence," § 65.  
 Of risk of injuries, see "Carriers," §§ 323-349.  
 Of risk of injuries from explosion of powder magazine, see "Explosives," § 8.  
 Of risk of injury by passenger, see "Shipping," § 166.  
 Of risk of injury from defects in private roads, see "Private Roads," § 12.

*Annotation.*

1 Words and Phrases, 588, 589.

**ASSURANCE.**

*Cross-References.*

See "Insurance."  
 Covenant of further assurance, see "Covenants," § 44.  
 Of master to servant as affecting assumption of risk, see "Master and Servant," § 205.

*Annotation.*

1 Words and Phrases, 591.

**ASYLUMS.**

*Scope-Note.*

[INCLUDES institutions for protection or relief of afflicted or unfortunate persons, whether founded or maintained by private means or in part or wholly by government; establishment, maintenance, regulation, and management of such institutions; and rights, powers, duties, and liabilities of managers and other officers, etc., thereof.

[EXCLUDES institutions for cure or treatment (see "Hospitals"); relief of destitute persons in general (see "Paupers"); powers of incorporated cities, towns, etc., in respect of establishment, maintenance, etc., of asylums (see "Municipal Corporations"); and asylums regarded as charitable institutions (see "Charities"). For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Establishment and maintenance of private asylums.
- § 2. Establishment and maintenance of public asylums.
- § 3. Regulation and supervision.
- § 4. Officers.
- § 5. Inmates.
- § 6. Management of institution.
- § 7. Liabilities of proprietors, officers, and employees.
- § 8. Actions.

*Cross-References.*

See "Hospitals"; "Reformatories."  
 Commitment and treatment of insane persons, see "Insane Persons," §§ 46-58.  
 Constitutionality of statutes, conferring judicial power on keepers of insane asylums, see "Constitutional Law," § 80.  
 Constitutionality of statutes, special nature of regulations, see "Statutes," § 77.  
 Constitutionality of statutes, subjects and titles of acts, see "Statutes," §§ 113, 119.  
 Duty of board of commissioners to insure asylum, see "States," § 94.

Exemption from taxation, see "Taxation," § 241.  
 Indigent insane, see "Insane Persons," § 56.  
 Liability for support of paupers in asylums, see "Paupers," § 47.  
 Poorhouses and poor farms, see "Paupers," § 9.  
 Public aid of denominational schools, see "Schools and School Districts," § 8.  
 Records of as evidence in criminal prosecutions, see "Criminal Law," §§ 429, 444.  
 Residence of inmates for purpose of voting, see "Elections," § 77.

**NOTE.**

No Maryland cases touching this subject are to be found in the Maryland Reports. Nevertheless the titles are given as they appear in the American Digest Key Number classification, so that the investigator may at one time accomplish the double purpose of learning whether a given point has been passed upon by the Maryland Courts and

also ascertain the particular place in the American Digest System where all state and federal cases upon the point will be found collected.

Cross-references will also be found throughout the title.

§ 1. Establishment and maintenance of private asylums.

§ 2. Establishment and maintenance of public asylums.

§ 3. Regulation and supervision.

§ 4. Officers.

*Cross-Reference.*

Increase or reduction of compensation, see "Officers," § 100.

§ 5. Inmates.

§ 6. Management of institution.

§ 7. Liabilities of proprietors, officers, and employees.

*Cross-Reference.*

Injuries to servant, see "Master and Servant," § 265.

§ 8. Actions.

*Cross-Reference.*

Right to sue asylum which is a state institution, see "States," § 191.

## ATTACHMENT.

### *Scope-Note.*

[INCLUDES taking and keeping in legal custody property of defendants in civil actions as security for payment of judgments that may be recovered against them therein; nature and scope of the remedy in general; in what cases and to and against whom it is allowed, and property subject thereto; grounds of attachment, and jurisdiction over and proceedings to obtain attachments; issuance, requisites, and validity of writs, warrants, etc., of attachment, and amendment thereof; levy or service, and proceedings incident thereto, and lien of attachments; quashing, vacating, or setting aside writs, warrants, etc., of attachment, dissolution thereof, or discharge of property from levy on giving security, and abandonment of attachment or of levy; claims of third persons to property levied on, interventions, and trial of right of property; return of warrants, writs, etc.; liabilities on and enforcement of securities given to obtain, dissolve, discharge, etc., attachments; and liabilities of persons other than officers for wrongfully procuring issuance, levy, etc., of attachments.

[EXCLUDES sequestration of specific property to preserve it pending litigation (see "Sequestration"); attachment as a means of commencing actions (see "Process"); attachment against particular kinds of property or to enforce particular classes of demands, liens, etc. (see "Partnership"; "Landlord and Tenant"; "Maritime Liens"; and other specific heads); attachment of property of defendants in possession of third persons, or of debts owing to defendants (see "Garnishment"); notices of pendency of action to bind real property attached (see "Lis Pendens"); attachment of persons (see "Contempt"); attachments issued by justices of the peace (see "Justices of the Peace"); property exempt from attachment, and protection of rights of exemption (see "Exemptions"; "Homestead"); judgment and execution in attachment suits (see "Judgment"; "Execution"); review of decisions granting, vacating, etc., writs, warrants, etc., of attachment, or discharging property therefrom (see "Appeal and Error"); suits in aid of attachments (see "Creditors' Suit"), and levy of attachments on property conveyed in fraud of creditors (see "Fraudulent Conveyances"); effect on attachments of proceedings under insolvent acts (see "Insolvency") or bankrupt acts (see "Bankruptcy"); liabilities for malicious attachment (see "Malicious Prosecution"); and duties and liabilities of officers in respect of issuance, levy, and return of writs, warrants, etc., of attachment (see "Clerks of Courts"; "Sheriffs and Constables"; and titles of other specific officers). For complete list of matters excluded, see cross-references, post.]

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

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- § 179. Priorities between attachments.
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- § 380. — Instructions.
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*Cross-References.*

- See "Execution"; "Garnishment"; "Sequestration."
- Actions by mortgagee for recovery of property attached, see "Chattel Mortgages," § 173.
- Against firm or partners, see "Partnership," § 208.
- Against the person in equity, see "Equity," § 439.
- Against the person to enforce judgment for taxes, see "Taxation," § 602.
- Against the person, to enforce payment of alimony, or other allowances, see "Divorce," § 268.
- Against the person to enforce payment of costs, see "Costs," § 281.
- Agreement on release of attachment as guaranty, see "Guaranty," § 4.
- Amendment of pleading setting up new cause of action, see "Pleading," § 248.
- Amendment or correction of verdict, see "Trial," § 340.
- Amount for which attached property sold as evidence of value, see "Evidence," § 113.
- Appointment of receiver to preserve and sell attached property, see "Receivers," § 14.
- As admission as to character of property as realty or personalty, see "Fixtures," § 29.
- As constructive assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 16.
- As giving jurisdiction of the person, see "Appearance," § 19.
- As interference with interstate commerce, see "Commerce," § 81.
- As mode of attacking fraudulent transfer, see "Fraudulent Conveyances," § 228.
- As mode of commencing action, see "Process," § 14.
- Assignability of forthcoming bond, see "Bonds," § 83.
- Assignment for creditors as dissolving attachment, see "Assignments for Benefit of Creditors," § 336.
- Attaching creditor as necessary party to foreclosure proceeding, see "Mortgages," § 427.
- Attachment or sequestration as proper remedy, see "Sequestration," § 1.
- Authority of attorney as to dismissal or withdrawal, see "Attorney and Client," § 101.
- Authority of court commissioners to quash, vacate or dissolve attachment, see "Court Commissioners," § 4.
- Best and secondary evidence of records and proceedings, see "Evidence," § 158.
- By mortgagee as waiver of mortgage, see "Chattel Mortgages," § 136.
- Certainty of statute relating to service of process, see "Statutes," § 47.
- Conditional guaranty on release of property from attachment, see "Guaranty," § 42.
- Consideration for agreement to dismiss attachment, see "Contracts," § 62.
- Consolidation of actions, see "Action," § 57.
- Contribution among creditors wrongfully attaching property, see "Contribution," §§ 5, 7.
- Default judgments, see "Judgment," §§ 102, 103, 138, 142, 158, 177.
- Defenses between original parties as affecting assignee of bond given in attachment, see "Assignments," § 100.
- Denial of motion to quash or vacate as ground for new trial, see "New Trial" § 17.
- Discharge of party in insolvency proceedings as affecting liability of sureties on attachment bonds, see "Insolvency," § 159.
- Dissolution by adjudication in bankruptcy, see "Bankruptcy," §§ 198, 203.
- Dissolution by adjudication in insolvency, see "Insolvency," § 71.
- Docketing judgment for purpose of creating general lien, see "Judgment," §§ 766-769.
- Effect of bankruptcy on liabilities on bonds, see "Bankruptcy," § 433.
- Effect of decree adjudging deceased debtor's estate insolvent, see "Executors and Administrators," § 411.
- Effect of discharge of principal in insolvency proceedings on liability of sureties on attachment bond, see "Insolvency," § 159.
- Effect of dissolution on right of sheriff to poundage, see "Sheriffs and Constables," § 51.
- Effect of stipulations as to lien, see "Stipulations," § 18.
- Entry of satisfaction as affecting right to attach, see "Mortgages," § 315.
- Equitable relief from judgment in attachment proceedings, see "Judgment," §§ 419, 425, 429, 447, 460.
- Estoppel to deny title of defendant in attachment, see "Estoppel," § 68.
- Estoppel to plead defense in action on attachment bond, see "Estoppel," § 32.
- Evidence of title to property attached, see "Property," § 9.



- Evidence of value of property wrongfully attached, see "Evidence," § 113.
- Execution on property held under attachment, see "Execution," § 55.
- Exemptions, see "Exemptions"; "Homestead."
- Fees of officers, see "Sheriffs and Constables," § 47.
- Final judgment, decree or order for sale of attached property, see "Judicial Sales," §§ 3, 61.
- Following statutes and practice in federal courts, see "Courts," § 346.
- For contempt of court, see "Contempt," § 55.
- For debts of bailee, see "Bailment," § 21.
- For rent, see "Landlord and Tenant," § 229.
- In actions between partners, see "Partnership," § 117.
- In actions by or against receivers, see "Receivers," § 181.
- Indorsement of attorney's name on writ to enforce mechanic's lien, see "Mechanics' Liens," § 266.
- Injunction against fraudulent transfer of property pending attachment, see "Fraudulent Conveyances," § 304.
- In proceedings to recover damages caused by trespassing animals, see "Animals," § 100.
- Intent of creditor as affecting validity of attachment as to other creditors, see "Fraudulent Conveyances," § 155.
- Interest on security to discharge attachment, see "Interest," § 39.
- Joinder of causes of action, see "Action," §§ 46, 47.
- Judgments in rem in attachment proceedings in general, see "Judgment," §§ 807, 812.
- Landlord's attachment under lease on shares, see "Landlord and Tenant," § 331.
- Laws relating to attachment as impairing obligation of contracts, see "Constitutional Law," § 176.
- Levy of attachment as waiver of right to mechanics' lien, see "Mechanics' Liens," § 215.
- Liabilities of officer growing out of levy or failure to levy, see "Sheriffs and Constables," §§ 98, 106-108, 113, 118, 119, 121, 123, 124, 139.
- Liability for re-taking property wrongfully taken under attachment, see "Obstructing Justice," § 3.
- Liability of carrier in respect to goods seized under legal process, see "Carriers," § 92.
- Liability of client for act of his attorney constituting wrongful attachment, see "Attorney and Client," § 102.
- Liability of judge for issuing attachment without affidavit and bond, see "Judges," § 36.
- Malicious attachment, see "Malicious Prosecution," §§ 10, 13, 25, 41, 66-69, 71.
- Mandamus to control acts of court or judge in reference to attachment proceedings, see "Mandamus," §§ 3, 36.
- Matters affecting jurisdiction or authority of courts in general, see "Courts," §§ 121, 189, 219, 264, 284, 303, 312, 346, 363, 478, 497, 498, 500, 515.
- Measure of damages for breach of agreement to discharge attachment, see "Damages," § 120.
- Of logs, lumber, mills, or mill products to enforce lien, see "Logs and Logging," § 33.
- Of property in hands of receiver as constituting contempt, see "Receivers," § 74.
- Of property of bank, see "Banks and Banking," §§ 224, 278.
- Of property of corporation in general, see "Corporations," §§ 509, 670.
- Of property of county, see "Counties," § 221.
- Of property of insolvent building and loan associations, see "Building and Loan Associations," § 42.
- Of property of municipal corporation, see "Municipal Corporations," § 1031.
- Of property of nonresidents as deprivation of property without due process of law, see "Constitutional Law," § 312.
- Of railroad property, see "Railroads," § 177.
- On foreclosure of mortgage, see "Chattel Mortgages," § 279.
- Operation and effect of judgments of other states in attachment proceedings, see "Judgment," § 824.
- Order in contempt proceedings against sureties on attachment bonds imposing imprisonment as constituting imprisonment for debt, see "Constitutional Law," § 83.
- Parol evidence to contradict or vary receipt given for property attached, see "Evidence," § 408.
- Personal judgment in proceedings by attachment, see "Judgment," § 206.
- Practice in federal courts, see "Courts," §§ 346, 366.
- Premature commencement of action, see "Action," § 62.
- Presentation of claim against estate of deceased debtor as abandonment of attachment, see "Executors and Administrators," § 264.
- Possession as notice of mortgage to attachment creditor, see "Chattel Mortgages," § 149.
- Priorities between attachment and agister's liens, see "Animals," § 26.
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Priorities between attachments and widow's allowance, see "Executors and Administrators," § 182.  
 Procedure in justice's court, see "Justices of the Peace," § 86.  
 Property taken under attachment as subject to replevin, see "Replevin," § 5.  
 Release of right of action or damages for wrongful attachment, see "Release," §§ 12, 29.  
 Remedies of creditors against trust property, see "Trusts," §§ 31, 136½, 150, 151, 153.  
 Remedies of creditors of insolvent corporations, see "Corporations," § 547.  
 Remedy by attachment as bar to creditors' suit, see "Creditors' Suit," § 5.  
 Removal from state to federal court of proceedings to discharge attachment, see "Removal of Causes," §§ 11, 114.  
 Removal of attached property by owner as larceny, see "Larceny," § 8.  
 Requisites and sufficiency to authorize garnishment, see "Garnishment," § 6.  
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 Resort to attachment as affecting right to foreclose mortgage, see "Mortgages," § 411.  
 Restraining attachment, see "Injunction," § 27.  
 Return of attachment as evidence of value of goods in action for conversion, see "Trover and Conversion," § 38.  
 Review of proceedings, see "Appeal and Error," §§ 71, 99, 190, 327, 339, 347, 523, 684, 870, 920, 1024, 1043.  
 Right of action of mortgagee for conversion of property attached, see "Chattel Mortgages," § 170.  
 Right of attaching creditor or officer to attack fraudulent transfer by debtor, see "Fraudulent Conveyances," § 222.  
 Right of attaching creditor to attack mortgage, see "Mortgages," § 85.  
 Right of attaching creditor to purchase and foreclose prior mortgage, see "Chattel Mortgages," §§ 203, 249.  
 Right of attaching creditor to redeem from execution sale, see "Execution," § 293.  
 Right of attachment creditor to redeem from sale to enforce vendor's lien, see "Vendor and Purchaser," § 289.  
 Right of bailee to recover possession of property attached for debt of bailee's husband, see "Bailment," § 21.  
 Right of creditors of executor to attach property acquired by executor while acting in representative capacity, see "Executors and Administrators," § 152.  
 Right of garnishing creditor to sue one who has taken debtor's property from posses-

sion of garnishee under attachment, see "Garnishment," § 105.  
 Right of trustee in bankruptcy as to pending actions against bankrupt, see "Bankruptcy," § 156.  
 Right of wife to interplead in attachment against husband, see "Husband and Wife," § 222.  
 Rights and remedies of creditors against mortgaged chattels on the ground of invalidity of mortgage, see "Chattel Mortgages," §§ 179, 202.  
 Right to jury trial, see "Jury," §§ 11, 16, 19.  
 Right to maintain attachment in actions for rent, see "Landlord and Tenant," § 229.  
 Service of writ or warrant on Sunday, see "Sunday," § 30.  
 Stay of attachment issued out of inferior court by issuance of attachment out of superior court, see "Courts," § 479.  
 Stipulations affecting liabilities for wrongful attachment, see "Stipulations," § 14.  
 Subrogation of surety on appeal to creditor's rights against surety on bond to dissolve attachment, see "Subrogation," § 7.  
 Suffering levy as act of bankruptcy, see "Bankruptcy," § 59.  
 Sufficiency of sale to defeat attaching creditors of seller, see "Sales," § 230; "Vendor and Purchaser," § 213.  
 Survival of cause of action for wrongful attachment, see "Abatement and Revival," § 55.  
 Title to deposits as affecting right of creditor of depositor to attach, see "Banks and Banking," § 129.  
 To enforce landlord's lien, see "Landlord and Tenant," § 260.  
 To enforce liens in general, see "Liens," § 20.  
 To enforce mechanic's lien, see "Mechanics' Liens," § 266.  
 Validity as to creditors, see "Fraudulent Conveyances," §§ 31, 125.  
 Validity of judgment against absentee, see "Absentees," § 5.  
 Validity of judgment to sustain execution, see "Execution," § 8.  
 Validity of levy of attachment as against unrecorded assignment for creditors, see "Assignments for Benefit of Creditors," § 163.  
 Wrongful attachment as constituting conversion, see "Trover and Conversion," § 5.  
 Wrongful attachment as waste, see "Waste," § 7.  
 Wrongful attachment in proceeding to collect rent, see "Landlord and Tenant," § 229.  
 Wrongful attachment of exempt property, see "Exemptions," §§ 105-153.

## I. NATURE AND GROUNDS.

### (A) NATURE OF REMEDY, CAUSES OF ACTION, AND PARTIES.

#### § 1. Nature and purpose of remedy.

##### *Cross-Reference.*

See post, § 2.

(a) The purposes of attachment are, by seizing the property of the debtor, to compel his appearance when, from nonresidence or flight, he is beyond the process of our judicial tribunals, and, on failure of appearance, to apply such property to satisfy his

debts. An attachment is an extraordinary, not an ordinary, writ, and is not intended to be used when the debtor is within the reach of ordinary process.—*Risewick v. Davis*, 19 Md. 82. [*Cited and annotated* in 19 L. R. A. 665, on what is nonresidence for attachment purposes.]

(b) The proceeding by attachment against a married woman trading as a feme sole, under act 1842, c. 293, § 8 (see Code 1888, art. 45, § 7), is in rem, the object being, not to compel the debtor's appearance, but to obtain a lien on the property to secure the claim.—*Brent v. Taylor*, 6 Md. 58. (For present law, see Code, art. 45, § 5, and annotations thereto.)

(c) The object of the judicial proceeding by attachment is to enable a creditor to obtain satisfaction from his absent debtor's property.—*In re Hepburn*, 3 Bland 65.

(d) The proceeding by attachment is only process to compel the appearance of a defendant whose person cannot be reached by the process of the court, and is not a proceeding in derogation of the principles of common law, but rather in mitigation of its severity.—*Barney v. Patterson*, 6 H. & J. 182.

(e) The attachment is to compel the appearance of the defendant.—*Campbell v. Morris*, 3 H. & McH. 535.

## § 2. Constitutional and statutory provisions.

### Cross-References.

See ante, § 1.

Impairing obligation of contracts, see "Constitutional Law," § 176.

(a) Attachment is a statutory proceeding in derogation of common law; hence the statutory requirements must be strictly followed.—*McPherson v. Snowden*, 19 Md. 197. [*Cited and annotated* in 19 L. R. A. 665, on what is nonresidence for attachment purposes.]

(b) Const. art. 3, § 31, declares that "no law passed by the General Assembly shall take effect until the first of June next after the session at which it may have passed unless it be otherwise expressly declared." *Held*, that as in the act 1854, c. 153 (Code, art. 9, § 2), providing that every person who does not reside in this state, and every

person who absconds, may be made a defendant in attachment, there is no express declaration when it shall take effect, its operation was suspended by said constitutional provision until June 1, 1854, and it did not therefore effect cases commenced previous to that date.—*Risewick v. Davis*, 19 Md. 82. [*Cited and annotated* in 19 L. R. A. 665, on what is nonresidence for attachment purposes.]

(c) The proceeding by attachment against a married woman trading as a feme sole, under act 1842, c. 293, § 8 (see Code 1888, art. 45, § 7), is in rem, the object being, not to compel the debtor's appearance, but to obtain a lien on the property to secure the claim.—*Brent v. Taylor*, 6 Md. 58. (For present law, see Code, art. 45, § 5, and annotations thereto.)

(d) Act 1795, c. 56 (see Code, art. 9, §§ 3-9, 14, 15), regulating the manner of issuing attachment, is limited in its operation; and nothing done under it is valid unless its provisions are substantially complied with.—*Shivers v. Wilson*, 5 H. & J. 130, 9 Am. Dec. 497.

## § 3. Actions in which attachment is authorized.

### Cross-References.

Averments in affidavit as to cause of action, see post, § 102.

Averments in affidavit as to nature of demand, see post, § 103.

Causes of action authorizing attachment, joinder with other causes, see post, § 14.

Actions between partners, see "Partnership," § 117.

Nature or insufficiency of cause of action as ground for quashing writ, see post, § 228.

To enforce liens, see "Landlord and Tenant," §§ 229, 260, 331; "Liens," § 20; "Mechanics' Liens," § 266.

## § 4.— In general.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 5.— On express contracts.

### Cross-References.

Contingent liabilities arising out of contract, see post, § 10.

Unliquidated damages arising out of contract, see post, § 8.

(a) Where the contracts upon which proceedings in attachment were taken were

made and grew out of transactions with the defendant while he was a resident citizen of the state, *held*, that such contracts, in the absence of the defendant, could be legally enforced against his property by attachment.—*Dorsey v. Kyle*, 30 Md. 512, 96 Am. Dec. 617. [*Cited and annotated* in 19 L. R. A. 665, on what is nonresidence for attachment purposes.]

### § 6.— On implied contracts.

#### *Cross-Reference.*

On judgment, see post, § 13.

(a) An action by a sheriff for fees due him by an absconding debtor will not justify an attachment.—*Arrants v. Dumagin*, 1 H. & McH. 218.

### § 7.— For torts.

#### *Cross-References.*

Criminal acts, see post, § 33.

Where tort is waived, see ante, § 6.

### § 8.— On demands not liquidated.

(a) Where the certificates of a mutual benefit society provided for the payment of an amount not to exceed \$1,000, an attachment by the holder of a matured certificate is not invalid because no precise amount is named, when it appears that the fund actually on hand and attached is sufficient to pay in full the matured claim, the operation of the attachment being to fix the amount.—*Failey v. Fee*, 83 Md. 83, 34 Atl. 839.

(b) Since the amount of damages allowable for breach of a contract to sell a note for less than the sum due thereon is presumptively the difference between such sum due and the agreed price, a claim based on such breach is not one for unliquidated damages, for which an attachment, by Code, art. 9, § 44, cannot issue without the giving of a bond.—*Dirickson v. Showell*, 79 Md. 49, 28 Atl. 896.

(c) A claim arising out of the alleged breach of the covenant in certain articles of agreement for the exchange of property, which contains numerous and complicated terms and conditions, embracing many things to be performed by the parties thereto, is not of such a fixed or definite character as may be recovered by attachment.—*Hough v. Kugler*, 36 Md. 186. [*Cited and annotated* in 34 L. R. A. (N. S.) 24, on

damage provision in land contract as penalty or stipulated damages.]

(d) A sum named in a contract as in the nature of a penalty for a breach thereof cannot be recovered as liquidated damages by attachment.—*State v. Beall*, 3 H. & McH. 347; *Hough v. Kugler*, 36 Md. 186. [*Cited and annotated* in 34 L. R. A. (N. S.) 24, on damage in land contract as penalty or stipulated damages.]

(e) In an action against agents for not selling a cargo of flour, and investing the proceeds in coffee, the amount of damages being ascertained by a hypothetical account purporting to show what profits might have been made upon sale of the coffee, no attachment can be had. The rule is that no attachment can issue unless the contract itself offers a standard for ascertaining the damages, without reference to extrinsic circumstances.—*Warwick v. Chase*, 23 Md. 154.

(f) An attachment may issue on any demand arising ex contractu, where the contract ascertains the amount of indebtedness or fixes a standard so certain as to enable the plaintiff by affidavit to aver it, or the jury, by their verdict, to ascertain and find it.—*Wilson v. Wilson*, 8 Gill 192, 50 Am. Dec. 685.

(g) In an action on a bond with a collateral condition, the court has no power to ascertain the breach and assess the damages, so as to grant an attachment.—*State v. Beall*, 3 H. & McH. 347.

### § 9.— On demands not matured.

#### *Cross-Reference.*

Nonresidence as ground of attachment on a debt not due, see post, § 25.

### § 10.— On contingent liabilities.

#### *Cross-Reference.*

Contingent claim as subject to attachment, see post, § 61.

### § 11.— On demands otherwise secured.

#### *Cross-References.*

One of two demands secured, see post, § 14.

Effect of entry of satisfaction of mortgage, see "Mortgages," § 315.

### § 12.— In suits in equity or actions on equitable grounds.

#### *Cross-Reference.*

To foreclose chattel mortgages, see "Chattel Mortgages," § 279.

**§ 13.— On judgments.***Cross-Reference.*

On implied contracts, see ante, § 6.

(a) An attachment on warrant, under act 1795, c. 56 (see Code, art. 9, §§ 3-9, 14, 15), against the property of a nonresident or absconding debtor, may be issued upon a transcript of a judgment rendered in another state.—Cockey v. Milne, 16 Md. 200.

(b) An action by a sheriff for fees due him by an absconding debtor will not justify an attachment.—Arrants v. Dumagin, 1 H. & McH. 218.

**§ 14.— Part of subject-matter not ground for attachment.***Cross-Reference.*

Necessity that entire debt be fraudulently contracted, see post, § 32.

**§ 15. Existence of or resort to other remedy.***Cross-References.*

Remedy by attachment as bar to creditor's suit, see "Creditors' Suit," § 5.

Resort to attachment as affecting right to arrest, see "Arrest," § 5.

Resort to attachment as affecting right to foreclose mortgage, see "Mortgages," § 411.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 16. Persons entitled.***Cross-Reference.*

Averments as to parties, see post, § 101.

*Annotation.*

See Code, art. 9, § 1.

(a) One may be a citizen of the District of Columbia, or of either of the other territories of the United States, and not be a citizen of any one of the states, within the meaning of act 1795, c. 56; and no citizen of the said district or of the territories can issue an attachment under that act.—Yerby v. Lackland, 6 H. & J. 446.

(b) Under act 1795, c. 56, regulating the manner of issuing attachment, no one could do so unless he was a citizen of Maryland or some other of the United States.—Shivers v. Wilson, 5 H. & J. 130, 9 Am. Dec. 497.

(c) An administrator may issue on attachment on warrant.—McCoy v. Swan, 2 H. & J. 344.

(d) An English creditor cannot attach property situated in Maryland belonging to an English bankrupt, since such creditor is controlled by the English bankrupt act.—Burk v. McClain, 1 H. & McH. 236.

**§ 17. Persons liable.***Cross-Reference.*

Averments in affidavit as to parties, see post, § 101.

**§ 18.— In general.**

(a) An attachment may issue against the property of foreigners under act 1715, c. 40 (see Code, art. 9, §§ 10-13, 25, 29, 30, 35), whether they are or have ever been residents of this state or not.—Willis v. Pearce, 6 H. & J. 191, note.

**§ 19.— Several defendants.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 20. Simultaneous and successive attachments.***Cross-References.*

Alias writs, see post, § 155.

Successive levies under same writ, see post, § 169.

Stay of attachment issued out of inferior court by issuance of attachment out of superior court, see "Courts," § 479.

(a) A writ and summons were issued, and a declaration or short note expressing plaintiff's claim was filed, according to Code, art. 9, § 9, and the summons was returned non est, and afterwards the attachment was quashed on petition of the defendant. *Held*, that the subsequent issue of two alias summonses, and two returns of non est thereon, would not entitle plaintiff to another attachment, as against an absconding debtor. Plaintiff must begin de novo.—Randle v. Mellen, 67 Md. 181, 8 Atl. 573.

(b) An alias attachment cannot be sued out before the first is returned; and the neglect of the sheriff to return the first affords no presumption that it has not been served.—Baldwin v. Wright, 3 Gill 241.

(c) An alias attachment issued on a judgment under act 1715, c. 40, § 7 (see Code, art. 9, §§ 29, 30), before the prior attachment is returned, is of no validity, such process being in the nature of an execution.—Baldwin v. Wright, 3 Gill 241.

**(B) GROUNDS OF ATTACHMENT.*****Cross-References.***

Insufficiency or want of grounds as ground for quashing writ, see post, § 230.

Recital of grounds in writ or warrant, see post, § 149.

In action for rent, see "Landlord and Tenant," § 229.

In justice's court, see "Justices of the Peace," § 86.

**§ 21. Necessity of grounds extrinsic to cause of action.****§ 22. Nature of cause of action.*****Cross-References.***

See ante, § 21; post, §§ 23, 24.

Averments in affidavit, see post, § 103.

Nature of cause of action as ground for quashing writ, see post, § 228.

**§ 23. Insolvency or inability to satisfy demand.*****Cross-Reference.***

False statements as to financial condition constituting fraud in contraction of debt, see post, § 32.

**§ 24. Refusal to pay or secure demand.*****Cross-Reference.***

Failure to keep promise to pay as authorizing attachment on ground that debt was fraudulently contracted, see post, § 32.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 25. Nonresidence.*****Cross-Reference.***

Proceedings in court of record after removal of cause from justice's court, see "Justices of the Peace," § 75.

***Annotation.***

What is nonresidence for the purpose of attachment.—19 L. R. A. 665, note.

When does nonresidence of person intending to leave permanently begin?—1 L. R. A. (N. S.) 778, note.

Determination of status by residence of debtor in case of foreign attachment.—17 L. R. A. 87, note.

Liability of foreign corporation which has complied with conditions of doing business in state to attachment as non-resident.—31 L. R. A. (N. S.) 278, note.

(a) Defendant, who had been a resident of R., removed to B., engaged a room, made several attempts to get into business, and informed several people that he intended to remain in B. permanently. The newspapers in R. reported that defendant had gone to B. to reside. Soon after defendant arrived

in B., he was asked by two persons if he intended to vote there, and replied that he did not, as R. was his home, but at that time he had not gained a political residence. *Held*, sufficient evidence to warrant quashing an attachment based on the ground of defendant's nonresidence in B.—*Blair v. Winston*, 84 Md. 356, 35 Atl. 1101.

(b) Under Code, art. 9, § 2, providing that "every person who doth not reside in this state \* \* \* may be made defendant in an attachment," the fact that a person's domicile is within the state will not relieve him from attachment, if he actually resides outside the state.—*Dorsey v. Kyle*, 30 Md. 512, 96 Am. Dec. 617. [*Cited and annotated in 19 L. R. A. 665, on what is nonresidence for attachment purposes.*]

(c) A person who has moved to another state, and is residing there, but who still considers this state as his home and domicile, to which he will ultimately return, is a "nonresident," within the meaning of the attachment laws.—*Risewick v. Davis*, 19 Md. 82. [*Cited and annotated in 19 L. R. A. 665, on what is nonresidence for attachment purposes.*]

(d) A citizen creditor may, by attachment, obtain satisfaction from the property, found within the state, of an alien enemy.—*In re Hepburn*, 3 Bland 95.

(e) An attachment will lie against the property of foreigners, whether they have been residents within the state or not.—*Barney v. Patterson*, 6 H. & J. 191, note.

**§ 26. Absconding, absence, or concealment.****§ 27.— In general.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 28.— Departure and absence.**

(a) A person residing and conducting a business within the state may become, by absconding, an absconding debtor, liable to attachment, though he is a foreigner, and not a naturalized citizen.—*Field v. Adreon*, 7 Md. 209. [*Cited and annotated in 19 L. R. A. 668, on what is nonresidence for attachment purposes.*]

### § 29.—Concealment and avoidance of process.

(a) Code, art. 9, § 25, provides that, "when two summonses have been returned non est against the defendant in any of the courts of law of the state, the plaintiff, on proof of his claim as hereinbefore required shall be entitled to an attachment"; that the judge shall order such attachment to issue; and that the same proceedings shall be thereupon had as in attachments issued against absconding debtors. Section 44 provides that attachments may also be issued against nonresident or absconding debtors in cases arising ex contractu, where the damages are unliquidated, but that in such cases no attachment shall issue until a declaration shall have been filed, verified by affidavit, and that a bond shall be filed, similar in all respects to the bond required in cases of attachments on original process for fraud, and that in cases arising under the section the practice and proceedings shall conform to those against nonresident and absconding debtors in actions ex contractu for liquidated damages. Section 4 provides that no attachment shall issue as to nonresident and absconding debtors unless there be an affidavit that the debtor is bona fide indebted to the creditors in a sum over and above all discounts, and that at the time of making the affidavit the creditor shall produce the evidence of debt, and make oath that he knows or is credibly informed and verily believes that the debtor is not a citizen of the state and does not reside therein, or, if the debtor resides in the state, that he does know, or is credibly informed and believes, that the debtor has absconded. *Held*, that where plaintiffs first proceeded under § 25, and had two returns of non est made, when their cause of action declared on was for liquidated damages, they could not, on such non est returns, maintain an attachment under § 44 on a claim for unliquidated damages, as to which cause of action no summons was issued and no returns of non est were made, especially in the absence of the affidavit required by § 4.—*Stewart v. Chappell*, 100 Md. 538, 60 Atl. 625.

(b) Under Code, art. 9, § 25, an attachment can be made against a defendant after

two non ests, though he be a nonresident.—*Steuart v. Chappell*, 98 Md. 527, 57 Atl. 17.

(c) Under Code, art. 9, § 3, providing that any one who shall "secretly remove himself from his place of abode with intention to evade the payment of his just debts, shall be considered as having absconded," it is not necessary that the debtor should actually leave the state, to entitle the creditor to a writ of attachment.—*Stouffer v. Niple*, 40 Md. 477. [*Cited and annotated in 30 L. R. A. 470, on intent to defraud sustaining attachment.*]

(d) A party may abscond and subject himself to the operation of the attachment laws against absconding debtors without leaving the limits of the state.—*Field v. Adreon*, 7 Md. 209. [*Cited and annotated in 19 L. R. A. 668, on what is nonresidence for attachment purposes.*]

### § 30.—Intended departure.

### § 31. Acts in official or fiduciary capacity.

#### *Cross-Reference.*

Nonresidence of trustee, see ante, § 25.

#### *Annotation.*

Right of creditor, who is also a stockholder of an insolvent corporation, to attach property of corporation, as affected by his own statutory liability.—41 L. R. A. (N. S.) 987, note.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 32. Fraud in contracting or incurring liability.

#### *Cross-Reference.*

Criminal acts, see post, § 33.

#### *Annotation.*

Attachment for fraud in general.—30 L. R. A. 465, note.

Liability of property of one partner for fraud of co-partner.—25 L. R. A. 645, note.

(a) The fact that one induces another to give him credit by promising to give security at a future day, and that he fails to keep the promise, does not show that the debt was fraudulently contracted, so as to justify an attachment.—*Johnson v. Stockham*, 89 Md. 358, 43 Atl. 920.

(b) Where a debtor obtains credit on the faith of representations made to a commercial agency, and it is sought to subject him

to attachment under act 1864, c. 306 (Code, art. 9, §§ 36 *et seq.*), authorizing attachments against fraudulent debtors, his fraudulent intention must be clearly shown, and too much weight will not be given to discrepancies between his condition as represented in the agent's reports and his actual condition.—*Dieckerhoff v. Brown*, 64 Md. xii, unreported, 2 Atl. 723.

(c) One obtaining credit on the faith of a "cash capital of \$5,000" does not, by his failure to state that such capital is borrowed money, become liable to attachment under act 1864, c. 306 (Code, art. 9, §§ 36 *et seq.*), as a fraudulent debtor.—*Dieckerhoff v. Brown*, 64 Md. xii, unreported, 2 Atl. 723.

### § 33. Criminal act in incurring liability.

*Cross-References.*

Fraud, see ante, § 32.  
Torts in general, see ante, § 7.

(a) A person who has stolen money from another is "indebted" to him within Code, art. 9, § 36, providing that it is necessary to the claim of an attachment that the defendant is bona fide indebted to plaintiff in the sum stated in the affidavit over and above all discounts, etc., defendant under such circumstances being under a quasi contractual obligation to return the funds so wrongfully taken.—*Downs v. City of Baltimore*, 111 Md. 674, 76 Atl. 861.

### §§ 34-38. Removal or concealment of property.

*Cross-References.*

See post, § 40.

Removal of attached property by owner as larceny, see "Larceny," § 8.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 39. Fraudulent transfer or other disposition of property.

*Cross-Reference.*

Conveyance of partnership property, see "Partnership," § 208.

*Annotation.*

Effect of attachment as election of remedies in case of fraudulent purchase.—15 L. R. A. 90, note.

### § 40.— In general.

*Annotation.*

What intent to defraud will sustain an attachment.—30 L. R. A. 465, note.

Does the right to attach property fraudulently conveyed start the statute of limitations as against the right to file a creditor's bill?—2 L. R. A. (N. S.) 988, note.

(a) The sale of goods in the usual mode of merchants to customers, who come to their stores to buy, is not a fraudulent disposition of them, which will warrant an attachment against a resident debtor, under act 1864, c. 306 (Code, art. 9, §§ 36-38, 40-42).—*Smith v. Easton*, 54 Md. 138, 39 Am. Rep. 355.

### § 41.— Transfers as security.

### § 42.— Judgments and executions.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 43.— Assignments for benefit of creditors.

*Cross-References.*

Failure of trustee to qualify, see "Assignments for Benefit of Creditors," § 209.

Requisites and validity of assignments, see "Assignments for Benefit of Creditors," §§ 1-170.

(a) Where a conveyance of a debtor's property to trustees for the benefit of such of his creditors as shall, within 60 days, accept its benefits and release the grantor from his debt, is void for fraud, under St. 13 Eliz. (Alex. Brit. Stat. [Coe's ed.] 499), for failure to dispose of any surplus remaining in the trustees' hands, such conveyance is also a disposition of the debtor's property with the intent to defraud his creditors, sufficient to render the property conveyed or its proceeds in the hands of the trustees subject to attachment on that ground, under act 1864, c. 306 (Code, art. 9, §§ 36-38, 40-42).—*Whedbee v. Stuart*, 40 Md. 414. [*Cited and annotated in 30 L. R. A. 467, 482, on intent to defraud sustaining attachment.*]

### § 44.— Preferences to creditors.

*Cross-Reference.*

By confession of judgment, see ante, § 42.

(a) The mere execution of a bill of sale to secure a bona fide creditor, whereby a preference is given, is not an assignment or disposition of property with intent to defraud creditors, within the attachment law.—*Johnson v. Stockham*, 89 Md. 358, 43 Atl. 920.



### § 45.— Intended removal or disposition.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 46. (Omitted from the classification used herein).

### § 47. Evidence as to grounds.

#### *Cross-Reference.*

Evidence and effect of affidavits on motion to quash in general, see post, § 249.

(a) The burden is on an attachment creditor to support the grounds of the attachment when traversed.—*Pitts v. Smelser*, 87 Md. 493, 40 Atl. 56.

### § 48. Waiver or loss of right.

(a) T. left bonds with A. for safekeeping, and A. sold them and used the proceeds. With knowledge of this fact, T. accepted A.'s promissory note for the value of the bonds, and collected interest on the note for two years, and afterwards brought an attachment suit against A., under act 1864, c. 306 (Code, art. 9, §§ 36 *et seq.*), to recover the value of the bonds, upon the ground that A. "fraudulently contracted the debt or incurred the obligation." *Held*, that the acceptance of the note, under the circumstances, created a new contract; that T. had waived his right to treat the case as within the statute, and was estopped from charging A.'s act to be fraudulent.—*Troup v. Appleman*, 52 Md. 456.

## II. PROPERTY SUBJECT TO ATTACHMENT.

#### *Cross-References.*

Property affected by lien or levy; see post, § 178.

Right of defendant in trespass by officer to show that property was exempt from attachment, see post, § 186.

Effect of commingling of property of different persons, see "Confusion of Goods," § 11.

Exemptions, see "Exemptions"; "Homestead."

In justice's court, see "Justices of the Peace," § 86.

Particular property and property of particular corporations, see "Banks and Banking," §§ 224, 278; "Building and Loan Associations," § 42; "Corporations," §§ 509, 670; "Counties," § 221; "Logs and Logging," § 33; "Municipal Corporations," § 1031; "Railroads," § 177.

Property fraudulently transferred by debtor, see "Fraudulent Conveyances," § 228.

Remedy of creditor of cestui que trust, see "Trust," § 151.

Separate estate of married woman for debts of husband, see "Husband and Wife," § 149.

What constitutes fixtures, see "Fixtures," § 29.

### § 49. Personal property in general.

#### *Cross-Reference.*

Mode of levying, see post, § 164.

(a) The goods and chattels of a defendant may be attached wherever found, within the reach of the process of the state.—*Campbell v. Morris*, 3 H. & McH. 535. [*Cited and annotated* in 35 L. R. A. 766, 771, on right of creditors to question validity of attachment; in 23 L. R. A. (N. S.) 540, on right of other claimants of property to intervene in attachment.]

### § 50. Real property in general.

#### *Cross-References.*

Equitable estates or interests, see post, § 58.

Mode of levying, see post, § 167.

#### *Annotation.*

Attachment of insured property as change of interest, title or possession.—24 L. R. A. (N. S.) 803, note.

(a) The act of 1715 (see Code, art. 9, §§ 10 *et seq.*), directing the manner of suing out attachments, extends to lands, since the statute 5 Geo. II. c. 7 (Alex. Brit. Stat. [Coe's ed.] 964), which makes lands subject to the same remedies as personal property for payment of debts.—*Davidson v. Beatty*, 3 H. & McH. 594; *Barney v. Patterson*, 6 H. & J. 182.

(b) The land of a defendant may be attached wherever found, within the reach of the process of the state.—*Campbell v. Morris*, 3 H. & McH. 535. [*Cited and annotated* in 35 L. R. A. 766, 771, on right of creditors to question validity of attachment; in 23 L. R. A. (N. S.) 540, on right of other claimants of property to intervene in attachment.]

### § 51. Property pledged.

### § 52. Property mortgaged or otherwise incumbered.

#### *Cross-Reference.*

Equitable estates or interests in general, see post, § 58.

### § 53.— Personal property.

**§ 54.—Real property.**

(a) The interest which a mortgagor had in land mortgaged by him was attachable before Acts 1795, c. 56, and Acts 1810, c. 160 (see Code, art. 9, §§ 3 *et seq.*).—*Ford v. Philipot*, 5 H. & J. 315.

**§ 55. Rights or interests secured by liens.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 56. Corporate stock.***Cross-References.*

Jurisdiction of property, see post, § 73.

Mode of levying, see post, § 165.

Pledged stock, see ante, § 51.

(a) Stock in a corporation is not attachable except by express statute, and when the statute allows it the authority extends, as a general rule, only to domestic corporations.—*United States Express Co. v. Hurlock*, 120 Md. 107, 87 Atl. 834.

(b) Code, art. 9, § 18, and art. 23, §§ 68, 69, providing that an attachment may be laid on any interest which defendant has in the stock of any corporation, that the shares shall be transferred to the purchaser on the books of the corporation by the sheriff or such person as shall be named by the court to which the writ is returnable, and subjecting to punishment for contempt all persons refusing to permit the transfer, do not subject to foreign attachment the stock of a nonresident in a foreign corporation, where the stock is not actually within the limits of the state.—*United States Express Co. v. Hurlock*, 120 Md. 107, 87 Atl. 834.

**§ 57. Interests under contracts.***Cross-Reference.*

Mode of levying, see post, § 166.

(a) A debtor who contracts to sell his land, receives part of the price, and gives a bond to convey legal title on payment of the balance, has not an attachable interest in the property.—*Houston v. Nowland*, 7 G. & J. 480.

**§ 58. Equitable estates or interests in general.***Cross-References.*

Interests of devisees or legatees, see post, § 60.

Property mortgaged or otherwise incumbered, see ante, § 52.

Real property in general, see ante, § 50.

(a) An equitable interest in land is attachable.—*Campbell v. Morris*, 3 H. & McH. 535.

**§ 59. Interests of heirs or distributees.****§ 60. Interests of devisees or legatees.***Cross-Reference.*

Equitable estates or interests in general, see ante, § 58.

**§ 61. Rights of action in general.****§ 62. Instruments and securities for payment of money.***Cross-References.*

Mode of levying, see post, § 166.

Rights of action in general, see ante, § 61.

(a) Railroad mortgage bonds, constituting the absolute property of a debtor, but registered in the names of his infant children and deposited with a third person, were attached by creditors. The court had jurisdiction over the debtor and his infant children, and could at any time acquire jurisdiction over the third person. The bonds were payable outside the state by foreign corporations. *Held*, that the bonds were "property," within Code, art. 9, § 10, declaring that any kind of property belonging to defendant may be attached.—*De Bearn v. De Bearn*, 115 Md. 668, 81 Atl. 223, 227; *Chau-met v. Same*, *Id.*

(b) Where bonds may not be reached by attachment against a debtor because they are registered in the names of others, equity has no power to change the registration at the instance of attaching creditors merely to make the bonds subject to attachment, in the absence of fraud or some ground of equity jurisdiction.—*De Bearn v. De Bearn*, 115 Md. 685, 81 Atl. 222, 227.

**§ 63. Ownership or possession of property.***Cross-References.*

Record or other notice of transfer, see post, § 180.

Want of ownership as ground for quashing writ, see post, § 235.

Attachment against purchaser after assignment of contract of sale of land, see "Vendor and Purchaser," § 214.

Attachment for debts of bailee, see "Bailment," § 21.

Duties of carrier in respect to goods seized under legal process, see "Carriers," §§ 75, 92.

Effect of parol partition, see "Partition," § 5.

Estoppel to deny title of defendant in attachment, see "Estoppel," § 68.  
Evidence of title in general, see "Property," § 9.

Property assigned for creditors, see "Assignments for Benefit of Creditors," §§ 1-170, 193.

Property fraudulently transferred by debtor, see "Fraudulent Conveyances," §§ 149, 179, 228.

Remedies of creditors against property in custody of receivers, see "Receivers."

Remedies of creditors against trust property, see "Trusts," §§ 31, 136½, 150, 151, 153.

Rights and remedies of creditors against mortgage chattels on ground of invalidity of mortgage, see "Chattel Mortgages," §§ 179-202.

Rights of creditors of executor to attach property acquired by executor while acting in representative capacity, see "Executors and Administrators," § 152.

Sufficiency of sale to defeat attaching creditors of seller, see "Sales," § 230; "Vendor and Purchaser," § 213.

Title to deposits as affecting right of creditor of depositor to attach, see "Banks and Banking," § 129.

Transfer of bill of lading, see "Carriers," § 58.

Transfer of shares of stock, see "Corporations," §§ 129, 136.

(a) Creditors *held* entitled to attach railroad bonds, though registered in the name of another than the debtor, where a previous decree had ordered that the registration be canceled.—*De Bearn v. Winans*, 119 Md. 390, 86 Atl. 1044.

(b) Money held by a trustee appointed by a court of chancery, and belonging to a nonresident, may be attached by his creditors, where the final audit has been ratified by the court, and the amount belonging to the debtor has been ascertained, and an order passed directing the trustee to pay it over.—*Williams v. Jones*, 38 Md. 555. [*Cited and annotated* in 13 L. R. A. (N. S.) 759, on right to attach or garnish fund in hands of officer of court after order to pay same to party.]

(c) Where property is in part bought by the purchaser for a third party, who paid the purchase-money so far as it was paid at the sale, and also paid subsequent installments as they fell due, such third party will have an attachable interest in the property to the extent of the payments made by him.—*Cecil Bank v. Snively*, 23 Md. 253.

(d) An attachment laid in the hands of a

trustee before a final account is valid as against the share of the attachment debtor, if, at any time before trial or judgment, the share of the fund in hand belonging to the debtor is ascertained by final account.—*Groome v. Lewis*, 23 Md. 137, 87 Am. Dec. 563. [*Cited and annotated* in 59 L. R. A. 386, on garnishment of unliquidated claims.]

(e) An attachment issued and laid in the hands of a trustee, before final account, cannot affect the fund or the trustee, or compel any modification of the final account, for the benefit of the attaching creditor, though it may be effective upon a sum ascertained by such an account, to be the distributive share of the debtor.—*McPherson v. Snowden*, 19 Md. 197. [*Cited and annotated* in 59 L. R. A. 386, on garnishment of unliquidated claims; in 13 L. R. A. (N. S.) 759, on right to attach or garnish fund in hands of officer of court after order to pay same to party.]

(f) Where a nonresident had goods in Maryland, which he assigned, bona fide, in payment of a precedent debt, to a resident, and the warehouseman, where the goods were deposited, accepted the order of the assignor to deliver them to the assignee, it was *held* that the assignment was valid as against a creditor who afterwards attached the goods, notwithstanding the assignment was not recorded under act 1834, c. 79, § 3.—*Wells v. Biscoe*, 3 Gill 406.

## § 64. Property in custody of the law.

### Cross-References.

Concurrent and conflicting jurisdiction of courts, see "Courts," §§ 478, 497, 498, 500, 515.

Effect of bankruptcy proceedings, see "Bankruptcy," § 20.

Property assigned for creditors, see "Assignments for Benefit of Creditors," §§ 1-170, 193.

Property in hands of receiver, see "Receivers," §§ 62, 74, 79.

(a) The proceeds of the sale of lands belonging to an estate were collected by the trustee and paid into court under an order to that effect, before an attachment was laid in the hands of the trustee. *Held*, that the fund was not liable to attachment.—*Mattingly v. Grimes*, 48 Md. 102. [*Cited and annotated* in 13 L. R. A. (N. S.) 759, on right to attach or garnish fund in hands of

officer of court after order to pay same to party.]

(b) Goods and chattels taken under a valid writ of attachment, whether belonging to the debtors or a third person, are in the custody of the law, and the owner thereof cannot maintain an action for trespass de bonis asportatis, either against the creditors or the officer, for attaching the same under a subsequent writ.—*Ginsberg v. Pohl*, 35 Md. 505.

(c) A trustee appointed by the high court of chancery is an officer of the court, and money in his hands cannot be attached.—*Bentley v. Shrieve*, 4 Md. Ch. 412.

### § 65. Joint or several property.

#### *Cross-Reference.*

Partnership property, see "Partnership," § 208.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## III. PROCEEDINGS TO PROCURE.

#### *Cross-References.*

Mandamus to control acts of court or judge in reference to attachment proceedings, see "Mandamus," § 36.

Practice in federal courts, see "Courts," § 346.

Procedure in justices' courts, see "Justices of the Peace," § 86.

### (A) JURISDICTION AND VENUE.

#### *Cross-References.*

Jurisdiction to quash, vacate or dissolve, see post, § 236.

Want of jurisdiction as ground for quashing writ, see post, § 231.

Jurisdiction of justices of the peace, see "Justices of the Peace," § 48.

Matters affecting jurisdiction or authority of courts in general, see "Courts," §§ 121, 188, 189, 219, 264, 284, 303, 346, 363, 478, 497, 498, 500, 515.

Removal of cause, see "Removal of Causes," §§ 11, 108, 111, 112, 114.

### § 66. Nature and extent of jurisdiction.

### § 67. Authority of courts in general.

### § 68. Jurisdiction of courts of equity.

(a) Since attachment is a special statutory remedy, and the jurisdiction is exclusively in a court of law, a court of equity would seem to have no power to pass any order to aid or perfect the remedy, where for any cause it is not full and complete.—*McPherson v. Snowden*, 19 Md. 197. [*Cited and an-*

*notated* in 59 L. R. A. 386, on garnishment of unliquidated claims; in 13 L. R. A. (N. S.) 759, on right to attach or garnish fund in hands of officer of court after order to pay same to party.]

### § 69. Jurisdiction of particular courts.

#### *Annotation.*

Federal courts following state decisions as to construction and effect of attachment laws.—40 L. R. A. (N. S.) 436, note.

(a) The Circuit Court of the United States has jurisdiction and authority to award an attachment under act 1715, c. 40 (Code, art. 9, § 25), on the return of two non ests to writs of *capias ad respondendum* sued out, in the name of the United States, against the property of a defendant, whether he be in fact a resident of the state or not.—*Barney v. Patterson*, 6 H. & J. 182.

### § 70. Authority of judges and judicial officers.

### § 71. Jurisdiction of action.

#### *Annotation.*

May a state court protect an inchoate interest in real property under an attachment in a suit pending in a Federal court, or *vice versa*?—6 L. R. A. (N. S.) 624, note.

### § 72. Jurisdiction of person of defendant.

### § 73. Jurisdiction of property attached.

(a) Code, art. 9, § 18, and art. 23, §§ 68, 69, authorizing the attachment of shares of stock and providing for their transfer on the books of the corporation, do not subject to attachment the stock of a nonresident in a foreign corporation, where the stock is not actually within the state.—*United States Express Co. v. Hurlock*, 120 Md. 107, 87 Atl. 834.

(b) A contention that, by a decree of the court giving railroad bonds to an alien, such bonds were not subject to attachment as concerning property without the jurisdiction of the court *held* not tenable where the bonds were still physically within the court's control.—*De Bearn v. De Bearn*, 119 Md. 418, 86 Atl. 1049.

(c) Attachment will lie at the instance of a municipal corporation against a nonresident, where the bank stock attached is with-

in the state.—*Gordon v. City of Baltimore*, 5 Gill 231.

#### § 74. Place of bringing proceedings.

##### *Cross-Reference.*

Place of making affidavit, see post, § 89.

(a) Under act 1864 (see Code, art. 9, § 40), requiring an attachment to be issued in the county in which the defendant resides, it is sufficient if one member of the defendant firm resides within the jurisdiction of the court.—*Collier v. Hanna*, 71 Md. 253, 17 Atl. 390, 1017. [*Cited and annotated in 26 L. R. A. 600, on right to attach property in hands of assignee for creditors; in 30 L. R. A. 486, on intent to defraud sustaining attachment.*]

#### § 75. Change of Venue.

#### § 76. Waiver of objections.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### (B) AFFIDAVITS.

##### *Cross-References.*

In opposition to proceedings to quash writ, see post, § 247.

In support of proceedings to quash writ, see post, § 246.

Use of affidavit as complaint, see post, § 211.

Want of or defects in affidavits as ground for quashing writ, see post, § 232.

Authentication of affidavit made by notary in another state, see "Affidavits," § 15.

For attachment to enforce mechanic's lien, see "Mechanics' Liens," § 266.

In justice's court, see "Justices of the Peace," § 86.

In municipal courts, see "Courts," § 189.

#### § 77. Necessity and purpose.

##### *Cross-References.*

On issue of alias writ, see post, §§ 144, 155.

Liability of judge for issuing attachment without affidavit and bond, see "Judges," § 36.

§§ 78-85. (Omitted from the classification used herein.)

#### § 86. Persons who may make.

#### § 87.— In general.

#### § 88.— Agents or attorneys.

##### *Cross-Reference.*

Authority to take affidavit, see post, § 90.

##### *Annotation.*

Does the description of affiant in affidavit for attachment as a specified officer of a corporation import that he is an agent of the corporation as required by statute —14 L. R. A. (N. S.) 1135, 15 L. R. A. (N. S.) 703, notes.

(a) An affidavit made by the agent of an attaching creditor, which describes him as agent, but does not show that he swore that he made it, as agent, on behalf of the creditors, is sufficient, under Code, art. 9, § 7, providing that the affidavit may be made by the agent of the creditor or creditors.—*Stockbridge v. Fahnestock*, 87 Md. 127, 39 Atl. 95; *Allen v. Same*, Id.

(b) Under Acts 1795, c. 56, § 1 (see Code, art. 9, §§ 4, 7), providing that a creditor may make application for an attachment to any judge, "and on the oath or affirmation of such creditor," etc., that the said debtor is bona fide indebted to him in the sum stated over and above all discounts, etc., the judge shall issue a warrant for an attachment, an affidavit is insufficient if it purports to be made by the attorney in fact of plaintiff.—*Didier v. Kerr*, 12 G. & J. 499.

#### § 89. Place and time of making.

(a) That the affidavit on which an attachment is based had been filed in an attachment suit between the same parties a year previously, and withdrawn from that case for use in the present proceeding, does not affect the validity of the present attachment, though the better practice would have been to file a new affidavit.—*Tonns v. Collins*, 116 Md. 52, 81 Atl. 219.

(b) The fact that affidavits for attachment were filed several months before the suit was instituted, though indicating that the process of the court was abused, was not such a want of a substantial compliance with statutory requirements as to show a want of jurisdiction, which can be first taken advantage of on appeal, as Code, art. 9, § 4, providing that "no attachment shall issue unless there be an affidavit," etc., and § 5, providing that such affidavit may be made in any state or foreign country, do not require that the affidavits be made at or near the time of instituting the suit.—*Hadden v. Linville*, 86 Md. 210, 38 Atl. 900.

#### § 90. Authority to take.

(a) An affidavit for an attachment, made before an associate justice of the District Court of Allegheny County, Pa., recited that it was taken before "the subscriber, a judge of the district court of said county, being a court of record." The clerk of the court certified that the judge before whom the affidavit was made was at the time associate law judge of said court, but did not certify that the court was a court of record. *Held*, that the authentication was insufficient, and the attachment, therefore, a nullity.—*Coward v. Dillinger*, 56 Md. 59.

(b) Where a nonresident's affidavit of debt is taken in a foreign state, for the issuance of an attachment thereon under act Nov., 1795, c. 56 (Code, art. 9, § 6), requiring the governor of such state to certify that the judge attesting the affidavit was duly authorized to do so, a governor's certificate that the attestation was in legal form, and made by the proper officer, whose official acts were entitled to full faith and credit, is sufficient.—*Washington v. Hodgskin*, 12 G. & J. 353.

(c) Under a statute authorizing affidavits for attachments to be made "before any judge of any other of the United States," it may be made before a judge of a county court of such state; it need not be before a judge of the highest court of the state.—*Smith v. Greenleaf*, 4 H. & McH. 291.

### § 91. Formal requisites.

#### *Annotation.*

Requisites of affidavit for foreign attachment.—17 L. R. A. 88, note.

(a) In the certificate of an affidavit for an attachment made before a justice of the peace, the omission of the word "dollars," in stating the amount of the plaintiff's claim, will be disregarded as a clerical misprision; the justice's warrant directing the clerk to issue an attachment for a sum "in the said affidavit specified."—*De Bebian v. Gola*, 64 Md. 262, 21 Atl. 275.

(b) Where an affidavit for attachment was actually sworn to before the issuance of the writ, the failure of the clerk to sign and certify the affidavit before the issuance of the writ, such omission having been cured before the return of the writ, does not in-

validate the attachment.—*Farrow v. Hayes*, 51 Md. 498.

(c) Where it appeared in the jurat upon which a warrant for attachment was based that the party made oath according to law, his subsequent affirmation was *held* to be surplusage, and the affidavit was *held* sufficient.—*Matthews v. Dare*, 20 Md. 248.

(d) Where the certificate of the clerk to an affidavit, on which a warrant was founded directing an attachment to issue, stated that W. D. "is one of the judges of the Court of Common Pleas for the County of Suffolk, in the commonwealth of Massachusetts, duly qualified and acting in said capacity, and that full faith and credit ought to be given to his legal attestations in court and out, in his said capacity," *held*, that, as it did not appear by the certificate of the clerk that the judge had authority to administer an oath, as directed by act 1795, c. 56, § 2 (Code, art. 9, § 6), the proceedings were defective.—*Prentiss v. Gray*, 4 H. & J. 192.

### § 92. Averments in general.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§§ 93, 94, 95, (Omitted from the classification used herein.)

### § 96. Knowledge or information.

#### § 96(a).—Sufficiency of averments.

(a) Code, art. 9, § 4, providing that in attachment proceedings against a nonresident the creditor "shall make affidavit that he knows or is credibly informed and verily believes that the said debtor is not a citizen of this state, and does not reside therein," is sufficiently complied with by a positive averment that "the defendant, not being a citizen of the state of Maryland, and not residing therein, is indebted," etc.—*Gunby v. Porter*, 80 Md. 402, 31 Atl. 324.

### § 97.—Necessity of knowledge.

#### *Annotation.*

Necessity that affidavit in attachment, made by agent or attorney of plaintiff, shall show personal knowledge.—14 L. R. A. (N. S.) 1126, note.

(a) An attachment affidavit stating that affiant "is credibly informed and verily be-

lieves" that defendant has removed from his place of abode with intent to injure and defraud his creditors is sufficient to sustain an attachment, under act 1795, c. 56 (see Code, art. 9, §§ 3, 4, 36). That act does not require affiant to swear to such facts positively.—*Boarman v. Patterson*, 1 Gill 372.

**§ 98.—Means of knowledge.**

**§ 99.—Necessity of belief.**

(a) An affidavit for an attachment which states that the affiant, a clerk of the plaintiff, "knows or has good reason to believe," is fatally defective in not conforming to act 1864, c. 306 (*cf.* Code, art. 9, § 36), which requires a statement that the plaintiff "knows or believes."—*Dean v. Oppenheimer*, 25 Md. 368.

**§ 100.—Sources of information and grounds of belief.**

**§ 101. Averments as to parties.**

*Cross-Reference.*

Persons entitled to writ, see ante, § 16.

(a) A judgment of condemnation on an attachment, the judgment being of 12 years' standing, should not be stricken out on account of the use of the words "James & Co." in the affidavit upon which the warrant was issued, for "James Foran & Co.," that being an obvious clerical error.—*Foran v. Johnson*, 58 Md. 144.

(b) Under act 1864, c. 306 (see Code, art. 9, § 36), authorizing an attachment on affidavit that "plaintiff knows or has reason to believe" the facts set forth as ground of attachment, an affidavit stating that affiant appears on behalf of S., W., and M., partners trading under the name of S. & Co., and that said S. & Co. have good reason to believe, etc., is sufficient, without again setting out the names of the individual partners.—*Stewart v. Katz*, 30 Md. 314.

(c) Where an attachment affidavit is made by one other than the plaintiff, and states that affiant knows or believes defendant is about to transfer his property with intent to defraud his creditors, it is invalid, since act 1864, c. 306 (see Code, art. 9, § 36), permits an attachment only on an affidavit stating that "plaintiff" knows or believes.—*Dean v. Oppenheimer*, 25 Md. 368.

(d) Under act 1795, c. 56, § 1 (Code, art. 9, § 4), unless the affidavit of the creditor contain an averment of citizenship of the attaching creditor, no attachment against an absconding debtor can lawfully issue.—*Boarman v. Patterson*, 1 Gill 372.

(e) Where an affidavit is designed to procure a warrant for an attachment against the effects of an absconding debtor, under the act of 1795 (Code, art. 9, § 2), and it does not contain an averment of his citizenship, as prescribed by Code, art. 9, § 4, it is substantially defective.—*Boarman v. Patterson*, 1 Gill 372.

(f) Under acts 1795, c. 61, and acts 1825, c. 114, a party issuing an attachment to compel the appearance of an absent debtor must disclose, upon the face of his proceedings, that he is a citizen of the state, or of some one of the United States, or an inhabitant or resident of the District of Columbia, or some one of the territories of the United States; and this must appear with reference to all the plaintiffs, where there are more than one.—*Baldwin v. Neale*, 10 G. & J. 274. (*Cf.* Code, art. 9, § 1.)

(g) In an affidavit and warrant for attachment under act 1795, c. 56 (see Code, art. 9, §§ 3 *et seq.*), it is necessary to state that the plaintiff is a citizen of Maryland or of some other state of the United States.—*Bruce v. Cook*, 6 G. & J. 345; *Wever v. Baltzell*, 6 G. & J. 335; *Shivers v. Wilson*, 5 H. & J. 130, 9 Am. Dec. 497; *Yerby v. Lackland*, 6 H. & J. 446; *Mandeville v. Jarrett*, 6 H. & J. 498; but see *Baldwin v. Neale*, 10 G. & J. 274. (*Cf.* Code, art. 9, § 1.)

(h) Under act 1795, c. 56 (Code, art. 9, § 3 *et seq.*), an affidavit describing plaintiff as "a citizen of the United States" is not sufficient to authorize the issuing of the writ.—*Shivers v. Wilson*, 5 H. & J. 130, 9 Am. Dec. 497; *Yerby v. Lackland*, 6 H. & J. 446. But see *Baldwin v. Neale*, 10 G. & J. 274. (*Cf.* Code, art. 9, § 1.)

**§ 102. Averments as to cause of action.**

**§ 103. Averments as to nature of demand.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 104. Averments as to indebtedness.****§ 105.— In general.**

(a) A voucher on which attachment for services of an attorney is based is sufficiently definite, without setting out in detail the services rendered in each particular case, and the sum claimed as compensation in each.—*Steuart v. Chappell*, 98 Md. 527, 57 Atl. 17.

**§ 106.— Maturity.**

(a) An attachment affidavit which does not state that the indebtedness for which the attachment is issued is due is insufficient and void.—*Thompson v. Towson*, 1 H. & McH. 504.

**§ 107.— Amount.****Cross-References.**

See post, § 113.

Excessive claim as ground for quashing writ, see post, § 229.

Statement of amount in writ or warrant, see post, § 151.

(a) A principal's affidavit for an attachment charged his agents with \$9,578.58, damages "for not selling, and investing in a return cargo of coffee, a cargo of R. flour," which amount he ascertained by a hypothetical account purporting to show what would have been his profits had the investment been so made and the coffee received at R. at a certain date, the contract being wholly in his four letters of instructions. *Held*, that the engagement of the agents could not be extended beyond a simple undertaking to comply with his instructions; that the contingencies of the voyage were at his own risk; that the amount could not be averred without resort to speculative and uncertain facts; and that the motion to quash was properly sustained.—*Warwick v. Chase*, 23 Md. 154.

**§ 108.— Credits and counterclaims.****§ 109. Averments as to security.****§ 110. Averments as to grounds of attachment.****§ 111.— In general.**

(a) The affidavit in an attachment against nonresidents sufficiently avers the jurisdictional fact of nonresidence if it states that "the defendants are not citizens of the state of Maryland, and do not reside therein,"

and it is not necessary to state that the defendants "are not citizens, nor is either of them a citizen, of Maryland, and do not, nor does either of them, reside therein."—*Franklin v. Claflin*, 49 Md. 24.

(b) Under act 1795, c. 56 (see Code, art. 9, §§ 3, 4), authorizing an attachment against a debtor not a citizen or resident of the state, or against a resident actually absconding or removed from his place of abode, the affidavit required for the issuance of the writ must state either that "defendant was not a citizen or resident of the state," or "that, being a citizen, he is actually run away, absconding, or removed from his place of abode."—*Risewick v. Davis*, 19 Md. 82. [*Cited and annotated in 19 L. R. A. 665, on what is nonresidence for attachment purposes.*]

(c) To procure an attachment against an absconding debtor, the affidavit of the creditor should allege that the debtor was a citizen of that state.—*Dickinson v. Barnes*, 3 Gill 485.

(d) Where an affidavit is designed to procure a warrant for the attachment of the goods of an absconding debtor under Code, art. 9, § 2, and it does not contain an averment as to his citizenship, as prescribed by § 4, it is substantially defective.—*Boorman v. Patterson*, 1 Gill 372.

**§ 112.— Language of statute.****§ 113.— Stating specific facts.****§ 114.— Stating more than one ground.****§ 115.— Alternative or disjunctive statements.**

(a) Act 1864, c. 306, § 1 (Code, art. 9, § 36), specifies four grounds for which an attachment may be allowed, two of which grounds contain branches connected by the disjunctive "or." *Held*, that an affidavit setting out such grounds and their branches in the words of the act is not defective, on the ground that the allegations of the affidavit are not clear and distinct, but are stated in the alternative.—*Howard v. Oppenheimer*, 25 Md. 350.

(b) An attachment affidavit stating that defendant has done or is about to do the acts complained of, as affiant has good reason to believe, is not invalid because it states



two grounds for attachment, either of which would have been sufficient, in the alternative.—Howard v. Oppenheimer, 25 Md. 350.

**§ 116. Averments as to property of defendant.**

**§ 117. Averments as to purpose of attachment.**

**§ 118. Reference to and extracts from pleadings and other papers.**

**§ 119. Complaint of other pleading accompanying affidavit.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 120. Evidence of indebtedness accompanying affidavit.**

(a) The original vouchers in an attachment case may be withdrawn, on leaving copies, without invalidating the attachment.—Johnson v. Stockham, 89 Md. 368, 43 Atl. 943.

(b) In an action on a money claim, a voucher stating the amount of the claim, but not on what account contracted, is insufficient to support an attachment.—Burk v. Tinsley, 80 Md. 98, 30 Atl. 604.

(c) Under the Maryland statutes relating to attachments, providing that plaintiff shall produce to the officer before whom the affidavit is made "the bond, account, or other evidence of debt" on which the warrant shall issue to the clerk, "and upon the receipt of said warrant, with the proofs on which the same was granted, and not otherwise, the clerk shall issue the attachment," the Superior Court of Baltimore City may allow notes and an open account, filed with the warrant to the clerk to issue a writ of attachment, to be withdrawn from the files on leaving copies thereof made by the clerk, without invalidating the attachment proceeding.—Franklin Bank v. Matthews, 69 Md. 107, 14 Atl. 703.

(d) The statute requiring that the note on which an absconding debtor is indebted shall be produced before the justice taking the affidavit, a note written in a foreign language need not be accompanied by a translation when so produced.—De Bebian v. Gola, 64 Md. 262, 21 Atl. 275.

(e) In proceedings to subject, by attachment, the property of a married woman, the account annexed to the affidavit, and referred to therein, was simply for "professional service, as per agreement, \$200," without further specification. *Held*, insufficient and fatally defective.—Hoffman v. Reed, 57 Md. 370.

(f) To the affidavit on which an attachment on warrant issued, the account annexed, for materials furnished in connection with certain work specified therein, named only the total amount due for glass, iron, rubber, and the like. *Held*, that this account was sufficient, as a bill of particulars could be demanded, if desired.—Bartlett v. Wilbur, 53 Md. 485.

(g) Under Code, art. 9, § 4, an annexed account is sufficient which shows the total amount due, and that it is for "cash loaned at sundry times," without setting out the dates and amounts of the several loans.—Cox v. Waters, 34 Md. 460.

(h) Code, art. 9, § 4, does not require the attaching creditor to produce the testimony qua testimony by which his claim is to be established, but the cause of action.—White v. Solomonsky, 30 Md. 585.

(i) Where the account produced in attachment to show the indebtedness of the defendant is made out in the mode usually adopted by merchants engaged in extensive business, and is perfectly intelligible, it is sufficient.—Stewart v. Katz, 30 Md. 334.

(j) Act 1864, c. 306 (see Code, art. 9, §§ 4, 37), requires that, at the time of making an affidavit for attachment, the plaintiff shall produce the bond, account, or other evidence of indebtedness, that the same may be filed with the papers in the case. It appeared from the introductory certificate of the record, and by the writ issued and signed by the clerk, that the evidence of the debt sued upon had been filed. *Held*, that the record showed a compliance with the statutory requirement, though the clerk, in his certificate containing the affidavit, did not certify that the instruments had been produced.—Howard v. Oppenheimer, 25 Md. 350.

(k) Under Code, art. 9, § 4, which requires

that a creditor, applying for a warrant for an attachment, shall produce "the bond, account, or other evidences" of the debt, a creditor suing upon a contract, to which he was not a party, must produce the assignment upon which his claim is founded.—*Cumberland Coal & Iron Co. v. Hoffman*, 22 Md. 495.

(l) Under act 1795, c. 56, § 1 (Code, art. 9, § 4), an attachment against the property of a nonresident or absconding debtor could be issued upon the production of a transcript of a judgment rendered in another state.—*Cockey v. Milne*, 16 Md. 200.

(m) At the time of making oath to obtain an attachment, the plaintiff produced an account of goods sold and delivered as his claim against the alleged absconding debtor. The "short note" filed in the cause was for goods sold and delivered, money lent, paid, etc., to the defendant, and for money had and received by the defendant for use of the plaintiff. *Held*, that certain promissory notes given for part of the purchases, though not produced before the magistrate, were, nevertheless, admissible as tending in connection with other facts to show an acknowledgment by defendant of the correctness of a portion of the account.—*Lee v. Tinges*, 7 Md. 215.

(n) Act 1795, c. 56, § 1 (Code, art. 9, § 4), requires an attaching creditor, at the time of making the preliminary proof of his claim, to produce the bond, bill, protested bill of exchange, promissory note, or other instruments of writing or account upon which the debtor is liable. *Held*, that the creditor was not obliged to produce all the written evidence in his possession which he intended to use before the jury to establish the debt.—*Dawson v. Brown*, 12 G. & J. 53; *Lee v. Tinges*, 7 Md. 215.

(o) In an action upon an open account, or for matters and things properly chargeable in an account, the creditor need only produce the account, though he has written orders for each item.—*Dawson v. Brown*, 12 G. & J. 53.

(p) In an action against an indorser, it is sufficient, under act 1795, c. 56, § 1 (Code, art. 9, § 4), to produce the note indorsed by

him, though there is other evidence tending to show that he indorsed the note.—*Dawson v. Brown*, 12 G. & J. 53.

(q) In an action upon an agreement containing dependent covenants, the production of the agreement is sufficient, under act 1795, c. 56, § 1 (Code, art. 9, § 4).—*Dawson v. Brown*, 12 G. & J. 53.

(r) To warrant the issuing of an attachment in the name of the United States, a bill of exchange drawn by the defendants, and payable to J. C., and by him indorsed to T. T., the treasurer of the United States, as their agent, and to and for their use, and duly protested for nonacceptance and for nonpayment, was with the protest for nonacceptance filed in court, and it being stated that the United States had complied with the law, and had made proof of their damages, etc. *Held*, to be sufficient proof.—*Barney v. Patterson*, 6 H. & J. 182.

(s) Where an affidavit for attachment is based on promissory notes thereto annexed, the attachment may issue, although the notes were not made payable to plaintiff, and are indorsed by the payee in blank, and although there is no proof of the handwriting of the drawer or indorser.—*Smith v. Greenleaf*, 4 H. & McH. 291.

### § 121. Application in addition to affidavit.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 122. Amendment and supplemental affidavits.

#### Cross-References.

Effect of amendment on liabilities of sureties, see post, § 337.

Relation back so as not to affect priority of lien, see post, § 179.

(a) Under Code, art. 9, § 28, the affidavit, short note, declaration, voucher, pleadings, and all other papers in attachment proceedings may be amended in the same manner and to the same extent as the proceedings in any other action.—*Kendrick v. Warren*, 110 Md. 47, 72 Atl. 461.

(b) In an attachment suit it was proper to permit plaintiffs to amend the voucher by adding thereto the certificate of letters testamentary granted to them, and by amend-

ing the title of the account as originally filed so as to read C. to D. and F., executors of the estate of P., instead of C. to the estate of P., deceased, Acts 1898, p. 127, c. 44 (Code, art. 9, § 28), providing that the voucher in attachment may be amended the same as proceedings in other suits.—Booth v. Callahan, 97 Md. 317, 55 Atl. 625.

(c) Where one of two joint defendants in attachment on a note is the maker, and the other an indorser, an amendment striking out the name of the maker is not justified by Code, art. 9, § 28, allowing amendments in attachment proceedings where the defect is one of form merely.—Blair v. Winston, 84 Md. 356, 35 Atl. 1101.

(d) Under Code, art. 75, §§ 35, 39, providing for amendments in all suits and proceedings in courts of law, including cases of misjoinder and nonjoinder of defendants, an affidavit of a creditor for a warrant of a justice of the peace, directing the clerk of the circuit court to issue an attachment against a nonresident debtor, cannot be amended in the latter court by striking out one of the defendants.—Halley v. Jackson, 48 Md. 254. (Cf. preceding paragraphs.) [Cited and annotated in 31 L. R. A. 426, on right to amend attachment affidavit.]

(e) An affidavit for attachment, being jurisdictional, cannot be amended so as to accommodate it to the circumstances and facts developed in the progress of the case.—Halley v. Jackson, 48 Md. 254. (Cf. preceding paragraphs.) [Cited and annotated in 31 L. R. A., 426, on right to amend attachment affidavit.]

### § 123. Filing.

### § 124. Variance.

#### Cross-Reference.

Between complaint or petition and writ or warrant, see post, § 156.

#### Annotation.

Questioning validity of attachment for insufficiency of affidavits.—35 L. R. A. 778, note.

### § 125. Defects, objections, and waiver.

#### Cross-References.

Defects as ground for quashing writ, see post, § 232.

Failure to disclose ground for attachment as defense to action on bond, see post, § 345.

(a) The objection that the affidavit on which an attachment issued was insufficient to give the court jurisdiction may be made at any stage of the proceedings.—Bruce v. Cook, 6 G. & J. 345.

### § 126. Operation and effect.

### § 127. Failure to make.

#### Cross-Reference.

Liability of judge for issuing attachment without affidavit and bond, see "Judges," § 36.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### (C) SECURITY.

#### Cross-References.

Claimant's bond for release of property, see post, § 298.

Defects in security as ground for quashing writ, see post, § 232.

Discharge on security, see post, §§ 261-264.

Liabilities on bonds, see post, §§ 330-353.

Release of property on security, see post, § 192.

In justice's court, see "Justices of the Peace," § 86.

Liability of attachment plaintiff on bond that he does not sign, see "Bonds," § 52.

Statute requiring plaintiff to give bond in attachment against resident but requiring no bond where defendant is nonresident, see "Constitutional Law," §§ 249, 312.

### § 128. Necessity and purpose.

#### Cross-References.

See ante, § 77.

On issue of alias writ, see post, § 155.

(a) Since the amount of damages allowable for breach of a contract to sell a note for less than the sum due thereon is presumptively the difference between such sum due and the agreed price, a claim based on such breach is not one for unliquidated damages, for which an attachment, by Code, art. 9, § 44, cannot issue without the giving of a bond.—Dirickson v. Showell, 79 Md. 49, 28 Atl. 896. [Cited and annotated in 59 L. R. A. 360, on garnishment of unliquidated claims.]

### § 129. Parties by and to whom to be given.

(a) Under a statute requiring an undertaking in attachment "on the part of plaintiff," it is not necessary for plaintiff to be a party to the bond.—Stewart v. Katz, 30 Md. 334.

**§ 130. Time for giving.****§ 131. Amount.****§ 132. Form and requisites of bond or undertaking.**

(a) A bond purported to be made on behalf of a firm by an agent, and appended thereto was the signature of the firm, and also that of the agent and sureties, but the authority of the agent to sign for the firm did not appear. *Held*, that the bond was sufficient, as the agent and sureties were bound, though the firm was not.—*Goble v. Brooks*, 48 Md. 108.

(b) In an action by J. W., an attachment bond given by W. W., "on behalf of" J. W., and W. W. and R. C., "sureties," and signed with the name of J. W. written by W. W., without apparent authority, and also signed by W. W. and R. C., is invalid.—*Wanamaker v. Bowes*, 36 Md. 42.

(c) A bond made by an agent in behalf of a firm, and signed by the agent and the sureties, is sufficient.—*Stewart v. Katz*, 30 Md. 334. [*Cited and annotated* in 41 L. R. A. (N. S.) 810, 819, on form of execution of deed by attorney in fact or agent; in 42 L. R. A. (N. S.) 12, on liability of one signing contract in representative capacity.]

(d) An objection that an attachment bond is only conditioned to satisfy costs and demands to defendant, and not to any other person interested in the proceedings, will not be sustained when the conditions of the bond are in the words prescribed by the statute, and are broad enough to cover all the costs in the case.—*Howard v. Oppenheimer*, 25 Md. 350. [*Cited and annotated* in 23 L. R. A. (N. S.) 540, on right of other claimants to intervene in attachment.]

**§ 133. Sufficiency and justification of sureties.**

(a) An attorney of the court may become a surety on an attachment bond.—*Lewis v. Higgins*, 52 Md. 614. (*Cf.* Rule 40, Rules of Court, Balto. City C. L. Courts.)

(b) The sufficiency of the sureties in the bond required by act 1864, c. 306 (see Code, art. 9, § 39), as preliminary to issuing an attachment, is a matter for the clerk of the court out of which the attachment issues.—*Gable v. Brooks*, 48 Md. 108.

(c) The sufficiency of the sureties in an attachment bond is a matter left entirely to the judgment of the clerk.—*Stewart v. Katz*, 30 Md. 334.

**§ 134. Approval of bond or undertaking.**

(a) The recital in a writ of attachment that the bond was produced and filed in court at the time the account was filed and the affidavit made is sufficient to show the clerk's approval of the bond, although he did not sign the memorandum of acceptance on the bond.—*Howard v. Oppenheimer*, 25 Md. 350; *Dean v. Same*, *Id.* 368.

**§ 135. Deposit as security.****§ 136. Amendment of bond or undertaking.****§ 137. Additional or new security.***Cross-Reference.*

Renewal of motion for additional security, see "Motions," § 42.

**§ 138. Defects, objections, and waiver.***Cross-Reference.*

Defects as ground for quashing writ, see post, § 232.

**§ 139. Failure to give.***Cross-Reference.*

Liability of judge for issuing attachment without affidavit and bond, see "Judges," § 36.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**IV. WRIT OR WARRANT.***Cross-References.*

Quashing or vacating writ or warrant, see post, §§ 225-279.

Return, see post, §§ 318-329.

Service, see post, § 170.

As protection to officer, see "Sheriffs and Constables," § 98.

In justices' courts, see "Justices of the Peace," § 86.

In municipal courts, see "Courts," § 189.

**§ 140. Nature of process or mandate.****§ 141. Authority to issue.**

(a) On the issuance of an attachment, under Code, art. 9, § 25, after several returns of non ests on successive summons, the order of the judge takes the place of and renders unnecessary the magistrate's warrant required by the general attachment

law.—Dirickson v. Showell, 79 Md. 49, 28 Atl. 896.

(b) Clerks of county courts have no authority to issue attachments on judgments of justices of the peace, unless plaintiff produces the original judgment, or a copy thereof, under the hand and seal of the justice.—Rodemer v. Detmold, 9 Gill 249.

(c) It is no reason for quashing an attachment that the affidavit of the creditor was made before a justice of the peace of one county, while the warrant to the clerk of the county court to issue the attachment was granted by a justice of another county, where the writ was issued out of the county wherein the latter justice resided.—Dickinson v. Barnes, 3 Gill 485.

#### § 142. Order of allowance.

##### *Cross-Reference.*

To enforce mechanic's lien, see "Mechanics' Liens," § 266.

(a) A warrant for attachment was addressed "to the clerk of Baltimore county court," and "Mr. Norwood," clerk of the court of common pleas, was by it directed to issue the writ. The court of common pleas was in existence, but the Baltimore county court was not. *Held*, that the words "clerk of Baltimore county court" might be regarded as surplusage, and of no effect.—McCoy v. Boyle, 10 Md. 391.

(b) A justice of the peace has no authority, under act 1795, c. 56, to issue his warrant to the clerk of the general court to issue an attachment; he could only do so to the clerk of the county court.—Smith v. Greenleaf, 4 H. & McH. 162. (See Code, art. 9, § 32; art. 52, §§ 43 *et seq.*)

#### § 143. Time for issuance.

##### *Cross-Reference.*

In action for rent, see "Landlord and Tenant," § 229.

(a) An attachment will be granted on affidavit and voucher before the regular proceedings in the action by petition, answer, and proof of the claim.—Brent v. Taylor, 6 Md. 58.

(b) It is not necessary that there should be a petition and answer and proof of claim before a writ of attachment issues. It is sufficient if the creditor lay the foundation

for the writ by affidavit and the proper voucher according to the practice under the attachment laws.—Brent v. Taylor, 6 Md. 58.

(c) An attachment ought to issue as of the term at which it was awarded.—Barney v. Patterson, 6 H. & J. 182.

#### § 144. Issuance and record thereof.

#### § 145. Form and requisites in general.

##### *Cross-References.*

In action against unincorporated association, see "Associations," § 20.

Indorsement of attorney's name on writ to enforce mechanic's lien, see "Mechanics' Liens," § 266.

#### § 146. Direction to particular officer or county.

#### § 147. Description of parties.

#### § 148. Recital of cause of action.

#### § 149. Recital of grounds of attachment.

#### § 150. Recital of proceedings to procure attachment.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 151. Statement of amount.

(a) Where the affidavit and account filed by the creditor warrant an attachment for a sum of money, but not for the whole amount claimed, it is irregular in the justice to award the attachment for a greater sum than is properly established.—Dawson v. Brown, 12 G. & J. 53.

#### § 152. Description of property of defendant.

#### § 153. Directions for service and return.

##### *Cross-Reference.*

Service of writ or warrant, see post, § 170.

#### § 154. Amendment.

(a) Under Code, art. 75, §§ 35, 39, providing for amendments in all suits and proceedings in courts of law, including cases of misjoinder and nonjoinder of defendants, a warrant directing the clerk of court to issue an attachment against nonresident debtors cannot be amended by striking out one of the defendants.—Halley v. Jackson, 48 Md. 254. (*Cf.* Code, art. 9, § 28.) [*Cited and*

annotated in 31 L. R. A. 426, on right to amend attachment affidavit.]

(b) An attachment on warrant was dated September 22d, the warrant being dated September 28d. In fact, the attachment was issued on the latter day. *Held*, that this was a clerical error, and it was the duty of the court to allow an amendment.—*McCoy v. Boyle*, 10 Md. 391.

### § 155. Alias writs.

#### *Cross-References.*

Right to issue after appearance of defendant, see post, § 210.

Simultaneous successive attachments, see ante, § 20.

Rule of court authorizing alias writ, see "Courts," § 80.

(a) A writ and summons were issued, and a declaration or short note expressing plaintiff's claim was filed, according to Code, art. 9, § 9, and the summons was returned non est, and afterwards the attachment was quashed on petition of the defendant. *Held*, that the subsequent issue of two alias summonses, and two returns of non est thereon, would not entitle plaintiff to another attachment, as against an absconding debtor. Plaintiff must begin de novo.—*Randle v. Mellen*, 67 Md. 181, 8 Atl. 573.

(b) An alias attachment issued on a judgment under act 1715, c. 40, § 7 (see Code, art. 9, § 29), before the prior attachment is returned, is of no validity, such process being in the nature of an execution.—*Baldwin v. Wright*, 3 Gill 241.

(c) An alias attachment cannot be sued out before the first is returned; and the neglect of the sheriff to return the first affords no presumption that it has not been served.—*Baldwin v. Wright*, 3 Gill 241.

### § 156. Variance.

#### *Cross-Reference.*

Between affidavit and complaint or proof, see ante, § 124.

(a) Any substantial variance between the cause of action filed with the attachment and that described in the "short note" is fatal on motion to quash the attachment.—*Browning v. Pasquay*, 35 Md. 294.

(b) Where the short note states a cause of action in assumpsit, and the writ issued is in trespass on the case, the attachment is

good as to that part of the claim for which assumpsit is the appropriate remedy, though wholly unavailable as to the residue.—*Boarman v. Israel*, 1 Gill 372.

### § 157. Defects, objections, and waiver.

#### *Cross-Reference.*

Defects as ground for quashing writ, see post, § 232.

(a) The omission of the clause of scire facias from a writ of attachment, required to be inserted by Code, art. 9, §§ 11, 29, is not such a defect as renders the proceedings absolutely void, so as to defeat the title of any purchaser brought in question in a collateral proceeding.—*Manton v. Hoyt*, 43 Md. 254.

(b) Plaintiff in ejectment claimed title by purchase under attachment proceedings in the federal court, and offered the record of such proceedings in evidence. *Held*, that though the intervening of a term before the issuing of the attachment after it is awarded, and the negligence of the marshal in not serving the scire facias in the attachment, etc., and making his return in conformity thereto, are irregularities in the proceedings, yet the judgment of condemnation is not therefore void, that court being a court of record of competent jurisdiction, from whose decisions an appeal or writ of error could have been taken to the supreme court.—*Barney v. Patterson*, 6 H. & J. 182.

### § 158. Effect of invalidity.

#### *Annotation.*

Extent of relief when process served constructively against nonresident.—50 L. R. A. 583, note.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## V. LEVY, LIEN, AND CUSTODY AND DISPOSITION OF PROPERTY.

#### *Cross-References.*

Wrongful or excessive levy as ground of action for damages, see post, § 361.

Attaching creditor as necessary party to foreclosure proceedings, see "Mortgages," § 427.

Commencement of lien of judgment in attachment, see "Judgment," § 773.

Duties of sheriff or constable, see "Sheriffs and Constables," § 88.

Effect of discharge in bankruptcy, see "Bankruptcy," § 433.

Fees of officers for levy and return, see "Sheriffs and Constables," § 45.  
In justices' courts, see "Justices of the Peace," § 86.

Levy on or sale of exempt property as denial or infringement of right of exemption, see "Exemptions," § 133.

Liabilities of officer growing out of levy or failure to levy, see "Sheriffs and Constables," §§ 98, 106-108.

Liability of receiver of attached property for rent, see "Landlord and Tenant," § 207.

Lien as ground for marshaling assets, see "Marshaling Assets and Securities."

Protection and enforcement of right of exemption, see "Exemptions," § 109; "Homestead," § 186.

Right of attaching creditor to attack mortgage, see "Mortgages," § 85.

Right of attaching creditor to purchase outstanding mortgage, see "Chattel Mortgages," §§ 203, 249.

Right of attaching creditor to redeem from execution sale, see "Execution," § 293.

Stay of attachment issued out of inferior court by issuance of attachment out of superior court, see "Courts," § 479.

Validity of lien as against trustee in bankruptcy, see "Bankruptcy," § 195.

## § 159. Necessity of levy.

### *Cross-Reference.*

Right of interveners to raise issue that writ was never levied, see post, § 307.

## § 160. Authority to levy.

## § 161. Powers of officer in making levy.

### *Cross-References.*

Duties of officers, see "Sheriffs and Constables," § 88.

Right to require prepayment of fees, see "Sheriffs and Constables," § 69.

## § 162. Mode and sufficiency of levy.

### *Cross-Reference.*

Right of intervener to question validity of levy, see post, § 307.

## § 163.— In general.

### *Cross-Reference.*

Waiver of objections, see post, § 176.

(a) It is the duty of the sheriff to serve a scire facias in an attachment on the persons who are found in the possession of the property attached, and to certify such service, or, if the property is unoccupied, to make a corresponding return.—*Barney v. Patterson*, 6 H. & J. 182.

## § 164.— Personal property in general.

(a) St. 8 Anne, c. 14 (Alex. Brit. Stat. [Coe's ed.] 921), providing that the goods

and chattels of a lessee of land shall not be seized under execution and removed from the land unless the plaintiff in execution shall tender to the landlord the arrears of rent due him by such lessee, does not apply to the seizure of the goods of a tenant under an attachment.—*Thomson v. Baltimore & Susquehanna Steam Co.*, 33 Md. 312.

## § 165.— Shares of stock.

## § 166.— Contracts and instruments for payment of money.

(a) Railroad bonds in a safety deposit box held sufficiently described, though the sheriff made no schedule, and no interrogatories to the garnishee were filed.—*De Bearn v. De Bearn*, 119 Md. 418, 86 Atl. 1049.

## § 167.— Real property.

## § 168. Property levied on under other process.

## § 169. Successive levies under same writ.

### *Cross-References.*

Alias writs, see ante, § 155.

Simultaneous and successive attachments, see ante, § 20.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 170. Service of writ or warrant.

### *Cross-References.*

Notice of levy, see post, § 171.

Directions for service in writ or warrant, see ante, § 153.

Effect of service of citation as curing defective service of writ, see post, § 207.

Computation of time, see "Time," § 10.

Service on Sunday, see "Sunday," § 30.

(a) The officer should serve the scire facias in the attachment on the persons found in possession of the property attached.—*Barney v. Patterson*, 6 H. & J. 182.

## § 171. Notice of levy.

### *Cross-Reference.*

Service of writ or warrant, see ante, § 170.

### *Annotation.*

Notice sufficient to put purchaser pending attachment on inquiry as to vendor's fraudulent intent.—32 L. R. A. 61, note.

(a) Where defendant's property is attached while in the possession of one who is not summoned and returned as garnishee, the failure of the latter, even when he is the plaintiff in the attachment suit, to give de-

fendant notice of the attachment, will not invalidate the proceeding.—*Register v. Woodward*, 82 Md. 645, 83 Atl. 320.

(b) Act 1842, c. 293, § 8 (see Code 1888, art. 45, § 7), authorizes an attachment against the property of a married woman trading as a feme sole, and requires the proceedings under such act to be "by attachment from the county court to compel payment, upon petition and proof of claim, according to the circumstances of each case, according to the course of the attachment law." *Held*, that the filing of the short note, and sending a copy with the attachment to be put up at the court-house door, as in an attachment under the attachment law, is indispensable in a case under such section, and the objection that it was not done is not obviated by the fact that the party appeared voluntarily—*Brent v. Taylor*, 6 Md. 58. (See Code 1911, art. 45, § 5, and annotation thereto.)

(c) The officer should serve the scire facias in attachment on the persons found in possession of the property attached.—*Barney v. Patterson*, 6 H. & J. 182.

### § 172. Inventory and appraisalment.

*Cross-Reference.*

As evidence in suit by claimant of property, see post, § 308.

### § 173. Amount of property attached, and excessive levy.

### § 174. Quashing or setting aside levy.

*Cross-Reference.*

Quashing or vacating writ or warrant, see post, §§ 225-279.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 175. Operation and effect of levy in general.

*Cross-References.*

Estoppel to deny title of defendant in attachment, see "Estoppel," § 68.

Levy of attachment as waiver of right to mechanic's lien, see "Mechanics' Liens," § 215.

Suffering levy as act of bankruptcy, see "Bankruptcy," § 59.

(a) A seizure of land under an attachment, and judgment of condemnation give no right of property or entry, nor divest any, until sale on process.—*Owings v. Norwood*, 2 H. & J. 96.

(b) Where there is a seizure of land under an attachment and a judgment of condemnation, the plaintiff gains no right of property or of entry into such lands by such seizure and condemnation; neither is the right of property or entry divested out of the defendant.—*Davidson v. Beatty*, 3 H. & McH. 594.

### § 176. Waiver of objections to levy.

*Cross-Reference.*

Mode and sufficiency of levy, see ante, §§ 162-167.

### § 177. Creation and existence of lien.

*Cross-Reference.*

Effect of stipulations, see "Stipulations," § 18.

(a) The mere issuance of an attachment, and placing it in the hands of the sheriff, gives no lien, and an attachment subsequently issued, but levied first, is entitled to priority.—*May v. Buckhannon River Lumber Company*, 70 Md. 448, 17 Atl. 274.

(b) In an attachment proceeding against land, the lien of the judgment of condemnation is a specific lien on the property attached, which relates back to the time when the attachment was levied.—*Cockey v. Milne*, 16 Md. 200.

### § 178. Property or interests affected, and extent of lien.

*Annotation.*

Effect of attachment on marketability of title.—38 L. R. A. (N. S.) 32.

(a) Where, after the making of a deed of trust of certain land for the benefit of creditors, but before the sale thereunder, attachments are issued on allegations that the grantors in the trust deed had disposed of their property with intent to defraud creditors, but it appears from a statement signed by the attorneys of the attaching creditors that the attachments are not filed as a lien on the land described in the trust deed, but they are laid in the hands of the trustee, and affect only the credits in his hands, such attachments cannot become liens on the land, and consequently form no objection to the ratification of the sale thereof under the deed of trust.—*Herzberg v. Warfield*, 76 Md. 446, 25 Atl. 664.



### § 179. Priorities between attachments.

#### Cross-References.

See post, § 284.

Right of junior attaching creditor to attack prior attachment, see post, § 291.

Waiver of defects by defendant as affecting subsequent attachments, see ante, § 176.

Computation of time, see "Time," § 11.

(a) Where the record shows that one attachment was issued and levied on certain property before another, though on the same day, it became a prior lien thereon, and is entitled to precedence in payment.—*Western Nat. Bank v. National Union Bank*, 91 Md. 613, 46 Atl. 960.

(b) A sheriff having several attachments placed in his hands on the same day should levy that first which first came to his hands.—*May v. Buckhannon River Lumber Co.*, 70 Md. 448, 17 Atl. 274.

(c) The mere issuing of an attachment, and placing it in the hands of a sheriff, gives no lien, and an attachment subsequently issued, but first levied, holds the property as against it.—*May v. Buckhannon*, 70 Md. 448, 17 Atl. 274.

(d) Since the pendency of an attachment in another state is not, until judgment thereon, a defense to an action by the same creditor for the same debt, its priority is immaterial in a question between suitors in courts of different states.—*Cole v. Flitcraft*, 47 Md. 312.

### § 180. Priorities between attachments and other liens or claims.

#### Cross-References.

Enforcement of claims or liens prior or superior to attachment, see post, §§ 286-289.

Advancement to defendant as lien, see "Descent and Distribution," § 155.

Agister's lien, see "Animals," § 26.

Attachment lien prior to assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 336.

Chattel mortgages, see "Chattel Mortgages," §§ 2, 138, 142, 143, 149.

Effect of stipulation, see "Stipulations," § 14.

Factor's lien for advances, see "Factors," § 47.

Laborers' liens, see "Master and Servant," § 82.

Lien for freight charges, see "Carriers," § 197.

Maritime liens in general, see "Maritime Liens," § 37.

Mechanics' liens, see "Mechanics' Liens," § 201.

Mortgages, see "Mortgages," § 151.

Municipal taxes, see "Municipal Corporations," § 975.

Proceedings by attachment creditors to have mortgage discharged, see "Mortgages," § 311.

Right of attaching creditor to purchase and foreclose prior mortgage, see "Chattel Mortgages," § 249.

Rights of assignee of bill of lading, see "Carriers," § 58.

Rights of foreign receiver, see "Receivers," § 207.

Taxes, see "Taxation," §§ 509, 510.

Validity of levy as against unrecorded assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 163.

Widow's allowance, see "Executors and Administrators," § 182.

#### Annotation.

Effect of attachment of real estate to defeat the right of receiver, subsequently appointed by another court, to possession.—3 L. R. A. (N. S.) 1073, note.

Pre-existing debt as consideration for mortgage as against attachment.—33 L. R. A. 309, note.

Priority between assignee for creditors and attaching creditors.—26 L. R. A. 593, note.

Effect, as against attachment, of pledge or other transfer of corporate stock not made in books of company.—67 L. R. A. 656, note.

Sufficiency of attachment to affect priority of claim of United States.—29 L. R. A. 234, note.

Priority of foreign attachment over foreign assignment.—17 L. R. A. 88, note.

Priority of foreign assignment over subsequent domestic attachment.—17 L. R. A. 85, note.

Judgment in attachment as *res judicata* against chattel mortgagee.—64 L. R. A. 366, note.

Law governing effect of fraudulent assignment for creditors to avoid previous attachment.—65 L. R. A. 365, note.

Adjudication of bankruptcy of member of firm as affecting rights under an attachment by firm creditors.—30 L. R. A. (N. S.) 787, note.

(a) Where judgments were obtained against a remainderman, and thereafter complainants brought suit against him, but, failing to reach him with process, caused attachments on two non ests to be levied on his interest in the real estate, and then, without procuring judgment of condemnation in their attachments, filed a bill in equity asking to have his interest in the remainder sold subject to his mother's life es-

tate, or clear of it, with surplus over its value to them, and that the executors might make a discovery of the assets, and for an injunction, a receiver, and an account, complainants, having only the inchoate lien of their attachments, could not force the judgment creditor, being a senior incumbrancer with the perfected lien of a final judgment, to submit to a sale free from his lien.—*Armiger v. Reitz*, 91 Md. 334, 46 Atl. 990. [Cited and annotated in 30 L. R. A. (N. S.) 115, on expectant or contingent interests in realty as subject of attachment or execution.]

(b) A defendant issuing an attachment on a judgment in his favor against plaintiff does not thereby acquire a lien on a judgment in plaintiff's favor against defendant, as against one becoming the assignee of such judgment prior to the issuance of the attachment.—*Baldwin v. Wright*, 3 Gill 241.

### § 181. Proceedings for determination of priority.

(a) Where several attachments by way of original process are laid on the same day, and there is nothing in the officer's return nor on the face of the proceeding to show a priority in the time of the service, it may be presumed that they were served at the same time, but if laid at different times on the same day they will take precedence according to the priority of service.—*Ginsberg v. Pohl*, 35 Md. 505.

### § 182. Transfers of property pending or subject to attachment.

#### Cross-Reference.

Injunction against fraudulent transfer of property pending attachment, see "Fraudulent Conveyances," § 304.

#### Annotation.

Appointment of receiver to preserve status quo pending attachment proceedings.—38 L. R. A. (N. S.) 232, note.

### § 183. Duration of lien.

#### Cross-Reference.

Effect of release of property on forthcoming bond, see post, § 191.

### § 184. Waiver, release, or abandonment, and discharge or extinguishment of levy or lien.

#### Cross-References.

Effect of failure of judge to make docket entry of issuance of writ, see ante, § 144.

Effect of giving claimant's bond, see post, § 298.

Loss of priority, see ante, § 180.

Withdrawal of application for sale as dissolution, see post, § 198.

By removal of cause from state to federal court, see "Removal of Causes," § 114.

Effect of discharge in bankruptcy, see "Bankruptcy," § 433.

Liability of officer for release of levy, see "Sheriffs and Constables," § 118.

Measure of damages for breach of agreement to discharge attachment, see "Damages," § 120.

#### Annotation.

Release of indorser of note by failure to take out attachment against maker.—18 L. R. A. (N. S.) 550, note.

Waiver of lien of chattel mortgage by attachment.—24 L. R. A. (N. S.) 490, note.

### § 185. Restoration of lien.

### § 186. Custody and care of property.

#### Cross-References.

Compensation of custodian, see post, § 193.

Liability of officer for loss of or injuries to property, see "Sheriffs and Constables," § 119.

Removal of attached property by owner as larceny, see "Larceny," § 8.

Right to replevy attached property, see "Replevin," § 5.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### §§ 187-190. Delivery of property to bailee or receptor.

#### Cross-References.

Presumption that claimant retained property under his bond and not as receptor, see post, § 298.

Parol evidence to contradict or vary receipt, see "Evidence," § 408.

#### Annotation.

Right of possession as between receiver and creditor levying attachment on property.—20 L. R. A. 392, note.

### § 191. Delivery of property on forthcoming or delivery bond.

#### Cross-References.

As estopping third person to claim title to property attached, see post, § 294.

Giving bond as affecting right to attack attachment, see post, § 239.

Giving bond as dispensing with notice of claim, see post, § 296.

Liabilities on bonds, see post, §§ 380-354.

Right of person giving bond to interplead, see post, § 291.

Assignability of bond, see "Bonds," § 83.

Execution of bond as constituting appearance giving jurisdiction of the person, see "Appearance," § 8.

**§ 192. Release of property on security.***Cross-References.*

Discharge of attachment on security, see post, §§ 261-264.  
 Liabilities on bonds, see post, §§ 330-354.  
 Conditional guaranty on release of property, see "Guaranty," § 42.  
 Liability of officer taking insufficient bond, see "Sheriffs and Constables," § 121.

**§ 193. Expenses of keeping property, and compensation of custodian.***Cross-Reference.*

Fees of officer, see "Sheriffs and Constables," § 47.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 194. Sale or other disposition of property.***Cross-References.*

Appointment of receiver to preserve and sell attached property, see "Receivers," § 14.

Sale under final order, see "Judicial Sales," §§ 3, 61.

**§ 195.— In general.**

(a) An attachment on warrant was sued out against the lands and goods of a non-resident debtor. The attachment was duly returned as laid, and the summons to the defendant as "not found." *Held*, that plaintiff was entitled to judgment of condemnation on motion, without first filing a bond for restitution, under the act of 1715, c. 40, § 3 (Code, art. 9, § 12), although such a motion was made before the expiration of a year and a day from the issue of the attachment.—*Dawson v. Contee*, 22 Md. 27.

(b) An order of court directing that attached property be sold, and that the sheriff hold the proceeds subject to the ultimate decision of the cause, does not prevent a claimant from appearing in the attachment case and asserting title to the property.—*Hall v. Richardson*, 16 Md. 396, 77 Am. Dec. 303.

(c) It is not necessary for plaintiff, on a judgment of condemnation on an attachment, to give security to defendant, if a year and day have elapsed since the issuing of the attachment.—*Wallace v. Forrest*, 2 H. & McH. 261.

**§ 196.— Property perishable or expensive to keep.****§ 197.— Real property.****§ 198.— Proceedings and order for sale.****§ 199.— Mode and conduct of sale.****§ 200.— Confirming or setting aside sale.***Cross-Reference.*

Time for application to vacate judgment of confirmation, see "Judgment," § 386.

**§ 201.— Title and rights of purchasers.***Cross-References.*

Right to assert title to property as against attachment, see post, § 294.

Effect of prior dedication, see "Dedication," § 48.

(a) A claimant may appear in an attachment suit and assert his title to the proceeds of a sale of attached property, made by order of the court, notwithstanding the fact that such proceeds have been paid over to the plaintiff upon his having given bond to indemnify the defendants "and all other persons," and the further fact that he is prosecuting another suit in the same court for the same cause.—*Hall v. Richardson*, 16 Md. 396, 77 Am. Dec. 303.

**§ 202.— Disposition of proceeds.****§ 203. Release of surplus property or proceeds.****VI. PROCEEDINGS TO SUPPORT OR ENFORCE.***Cross-References.*

Complaint or other pleading accompanying affidavit, see ante, § 119.

Reference to pleading in affidavit, see ante, § 118.

Action against executor, see "Executors and Administrators," § 429.

Effect of supersedeas or stay, see "Appeal and Error," § 487.

In justice's court, see "Justices of the Peace," § 86.

**§ 204. Prosecution of action in general.****§ 205. Process in action and service on defendant.***Cross-References.*

Defects as ground for quashing writ, see post, § 232.

Certainty of statute relating to service, see "Statutes," § 47.

Necessity of service of process before rendering judgment in rem, see "Judgment," § 807.

### § 206.—Necessity and sufficiency of process.

#### *Cross-Reference.*

As affecting time for issuance of writ, see ante, § 143.

(a) Under Code, art. 9, § 38, relating to attachments on original process for fraud, providing for a writ of summons, that the action shall be instituted either in the county where the defendant resides, or where the property to be attached may be found, but, if the action be instituted in any county other than that wherein the defendant resides, the writ of summons against defendant shall be directed to the sheriff of the county wherein he resides, the failure to issue the writ to the county where defendant resides is not fatal to the court's jurisdiction of the attachment proceedings, where defendant was actually served in the county in which the property was situated, on a writ directed to the sheriff of that county.—*Tonns v. Collins*, 116 Md. 52, 81 Atl. 219.

(b) In proceeding by attachment against a married woman trading as a feme sole, under act 1842, c. 293, § 8 (see Code 1888, art. 45, § 7), a summons is not necessary.—*Brent v. Taylor*, 6 Md. 58. (See Code 1911, art. 45, § 5, and annotation thereto.)

(c) Under act 1795, c. 56 (Code, art. 9, § 9), an attachment must always be attended with a *capias* against the defendant, and a short note of the plaintiff's cause of action.—*Stone v. Magruder*, 10 G. & J. 383, 32 Am. Dec. 177.

### § 207.—Personal service.

### § 208.—Substituted service.

#### *Cross-References.*

Effect as disproving allegation of affidavit that defendant had left state, see ante, § 126.

In lieu of publication, see post, § 209.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 209.—Publication or other notice.

#### *Cross-Reference.*

Of notice of attachment, see ante, § 171.

(a) Chapter 269 of Acts of 1849, requiring notice to be given in attachment suits before justices of the peace by posting affidavits and copies of the claim in certain

places, is repealed by Acts 1852, c. 239, § 2, which prescribes other ways of giving notice in such suits.—*Campbell v. Webb*, 11 Md. 471. (See Code, art. 52, § 45, and annotation thereto.)

(b) In proceeding by attachment against a married woman trading as a feme sole, under act 1842, c. 293, § 8 (see Code 1888, art. 45, § 7), the filing of the short note, and sending a copy with the attachment, to be posted on the court-house door as a means of notice to the debtor, is indispensable.—*Brent v. Taylor*, 6 Md. 58. (For present law, see Code 1911, art. 45, § 5, and annotation thereto.)

### § 210. Appearance.

#### *Cross-References.*

As affecting right to move to quash writ, see post, § 239.

Necessity to authorize motion to dissolve, see post, § 238.

Right to attack attachment after general appearance, see post, § 241.

As giving jurisdiction of the person, see Appearance," §§ 8, 9, 19.

(a) If a bond to dissolve an attachment is given by third parties, it is neither in fact nor in law an appearance to the action by the defendant, nor does it authorize the inference that he had any notice of the action or opportunity to appear and defend.—*Clark v. Bryan*, 16 Md. 171.

### § 211. Sufficiency of complaint or other pleading.

#### *Cross-References.*

Defects, grounds for quashing or vacating, see post, § 232.

Effect of amendment of pleading as dissolving attachment, see post, § 267.

Amendment of pleading setting up new cause of action, see "Pleading," § 248.

(a) A claim on quantum meruit for services of an attorney is unliquidated, so that there can be no recovery thereon by attachment, except by compliance with Code, art. 9, § 44, providing that, in attachment for unliquidated claims, the declaration must set out the account in detail, and a bond must be filed similar to that required in cases of attachment on original process for fraud.—*Steuart & Steuart v. Chappell*, 98 Md. 527, 57 Atl. 17.

(b) The short note in attachment is fatally defective if it does not set out the individual

names of the members of the firm in whose favor the attachment is issued.—*Hirsh v. Thurber*, 54 Md. 210.

(c) Under Acts 1864, c. 306 (see Code, art. 9, §§ 36 *et seq.*), a short note, specifying an indebtedness without stating the cause of action, is insufficient.—*Dean v. Oppenheimer*, 25 Md. 368.

(d) In attachment the filing of a short note with the clerk, setting forth the cause of action, is a substitute for the declaration.—*Trasher v. Everhart*, 3 G. & J. 242; *Spear v. Griffin*, 28 Md. 418.

(e) A plea in bar, which would be regarded as an answer to an action of assumpsit, unaccompanied by attachment, will be treated as valid, although the controversy originated in a proceeding by attachment.—*Bank of the United States v. Merchants' Bank*, 7 Gill 415.

(f) Where the short note, in an attachment cause, states a cause of action in assumpsit, and the writ is in trespass upon the case, matters for which debt or covenant was the only remedy cannot be recovered.—*Boorman v. Israel*, 1 Gill 372.

(g) In attachment, where the short note states a cause of action in assumpsit, and the writ issued is in trespass on the case, the note cannot be amended to embrace claims recoverable only in debt or covenant.—*Boorman v. Israel*, 1 Gill 372.

§ 212. Filing and service of pleadings.

§ 213. Trial in general.

§ 214. Appointment and proceedings of auditors or trustees.

§ 215. Writ of inquiry.

§ 216. Verdict or findings.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 217. Judgment.

*Cross-References.*

As evidence in action on bond, see post, § 350.

Availability of judgment as evidence on motion to vacate, see post, § 249.

Conclusiveness and effect in action on bond, see post, § 350.

Effect of failure to issue execution, see post, § 271.

Effect on proceedings for dissolution of attachment, see post, § 250.

Estoppel of receptor by judgment, see ante, § 189.

Retaining attachment on opening judgment, see post, § 267.

Right to enter judgment after dissolution of attachment, see post, § 276.

Commencement of lien of judgment in attachment, see "Judgment," § 773.

Default judgments, see "Judgment," §§ 102, 103, 142, 158, 177.

Docketing judgment for purpose of creating general lien, see "Judgment," §§ 766-769.

Equitable relief from judgment, see "Judgment," §§ 419, 425, 429, 447, 460.

Final judgment, decree or order for sale of attached property, see "Judicial Sales," § 3, 61.

Judgment in rem in attachment proceedings in general, see "Judgment," §§ 807, 812.

Operation and effect of judgments of other states, see "Judgment," § 824.

Personal judgment, see "Judgment," § 206.

Validity of judgment against absentee, see "Absentees," § 7.

Validity to sustain execution, see "Execution," § 8.

(a) Where railroad mortgage bonds of foreign corporations, in the custody of a third person for the owner and registered in the names of the infant children of the owner, are attached by creditors of the owner, the judgment for the creditors must be a judgment of condemnation against the bonds, and not in personam against the custodian.—*De Bearn v. De Bearn*, 115 Md. 668, 81 Atl. 223, 227; *Chaumet v. Same*, Id.

(b) Where judgments of condemnation nisi against an attached interest in land decreed to be sold in partition had become absolute by lapse of the term of court at which they were entered, the lien thereof was not affected by the fact that two years thereafter the partition suit assumed the form of a creditors' suit in so far as the interest attached was concerned, though a petition of one of the creditors, which did not refer to other creditors, but asked an award of the entire interest to it, was filed before such judgments became absolute.—*Western Nat. Bank v. National Union Bank*, 91 Md. 613, 46 Atl. 960.

(c) Since judgments of condemnation nisi against property attached in rem become absolute by lapse of the term of court at which they were rendered, such judgments, entered against an interest in lands decreed

to be sold in partition, after attachments were levied thereon and laid in the hands of the trustee appointed to make the sale, became specific liens on such interest after the lapse of the term at which they were entered, relating back to the time the attachments were laid, and after such interest was sold under the partition decree, such liens were transferred to the corresponding interest in the proceeds.—*Western Nat. Bank v. National Union Bank*, 91 Md. 613, 46 Atl. 960.

(d) Since Code, art. 9, § 13, prohibiting entry of final judgment of condemnation against a garnishee without prior proof of the debt and amount of assets in his hands, and declaring that no judgment of condemnation nisi shall be made absolute without such proof, relates only to garnishments, and does not refer to judgments of condemnation nisi against property attached in rem, the terms by which such judgments become absolute were not modified thereby.—*Western Nat. Bank v. National Union Bank*, 91 Md. 613, 46 Atl. 960.

(e) Where an attachment is issued out of the Baltimore City Court under Code, art. 9, §§ 36-42, requiring a writ of summons to be issued against defendant as in actions at law, and directing that the practice and pleadings shall conform as near as may be to those under attachments against non-resident and absconding debtors, and that defendant shall have a right to appear and plead and contest plaintiff's demands according to the ordinary course of proceeding at law, such attachment is not governed by act 1886, c. 184 (Balto. City Code, §§ 312, 313), applicable to the city of Baltimore alone, and defendant is not, as therein provided, at any time after 15 days from the return day of the writ, liable to a judgment by default for failure to file pleas required by the act, and also the affidavit therein mentioned.—*Sanborn v. Mullen*, 77 Md. 480, 26 Atl. 872.

(f) Where the debt due the plaintiff is a partnership debt, and the money attached is partnership assets, and one of the partners absconds, and the writ is served on the other partner, who appears and contests the claim, *held*, that, as all the assets of the

firm in the state devolve in such case on the remaining partner, judgment against him is sufficient to perfect the attachment.—*Thomas v. Brown*, 67 Md. 512, 10 Atl. 713.

(g) An attachment on warrant was sued out by A. against the lands, tenements, goods, and chattels of B., as a nonresident debtor, returnable on the fourth Monday of October next ensuing. The attachment was duly returned, "Laid as per schedule," and the summons to the defendant, "Not found." *Held*, that the plaintiff, on motion, was then entitled to judgment and condemnation.—*Dawson v. Contee*, 22 Md. 27.

(h) Where a nonresident's land is attached in an action against him, plaintiff is entitled on his nonappearance to judgment at the second term of the court, and to a confirmation of the attachment.—*Walters v. Munroe*, 17 Md. 501.

(i) In a proceeding in rem by attachment laid on land, the lien of the judgment of condemnation is a specific lien on the property condemned, which relates back to the time when the attachment was laid, and ripens into a perfect legal title in the purchaser under the execution.—*Cockey v. Milne*, 16 Md. 200.

(j) The plaintiff in attachment may recover a less sum than the amount sworn to by him before the justice.—*Lee v. Tinges*, 7 Md. 215.

(k) A judgment on attachment which not only condemns property towards satisfying that portion of plaintiff's demand which might be recovered under the short note, but also to satisfy that which could not be so recovered, is erroneous.—*Boarman v. Patterson*, 1 Gill 372.

(l) A judgment of condemnation on an attachment, and possession delivered under a liberate, vest the legal title.—*Plater v. Hepburn*, 3 H. & McH. 434.

## § 218. Enforcement of attachment against property not levied on.

### § 219.—In general.

### § 220.—Discovery of property.

### § 221.—Examination of defendant.

### § 222.—Proceedings against third persons.

### § 223. Actions by officers in aid of attachment.

#### *Cross-Reference.*

By officer and plaintiff jointly, see post, § 224.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 224. Actions by plaintiff in aid of attachment.

#### *Cross-References.*

Ancillary jurisdiction of federal courts, see "Courts," § 264.

Computation of time, see "Time," § 9.

Creditors' suits to reach property not subject to execution, see "Creditors' Suit."

Injunction to restrain fraudulent transfer of property, see "Fraudulent Conveyances," § 304.

Right to attack fraudulent transfer, see "Fraudulent Conveyances," § 222.

(a) If bonds decreed to belong to a debtor in his own right could not be attached because they were registered in the names of others, in absence of fraud or other ground of equitable jurisdiction, a court of equity has no power to change the registration of the bonds so as to sustain the attachment.—*De Galard De Brassac v. Winans*, 115 Md. 604, 80 Atl. 1071.

(b) If bonds belonging to petitioner, but registered in the name of his children, were subject to attachment by his creditors, and were attached and condemned in the hands of the garnishees, equity would have jurisdiction in a proper proceeding to have the registration of the bonds changed so as to make the judgment effective.—*De Bearn v. Winans*, 115 Md. 604, 80 Atl. 1071.

## VII. QUASHING, VACATING, DIS- SOLUTION, OR ABAN- DONMENT.

#### *Cross-References.*

As ground of action for wrongful attachment, see post, § 360.

Authority of administrator of deceased attachment debtor, see "Executors and Administrators," § 129.

Effect of assignment for benefit of creditors as dissolving attachment, see "Assignments for Benefit of Creditors," § 336.

Effect of decree adjudging deceased attachment debtor's estate insolvent, see "Executors and Administrators," § 411.

In justice's court, see "Justices of the Peace," § 86.

### § 225. Nature and form of remedy.

#### *Annotation.*

Injunction in aid of attaching creditors against sale under execution or subsequent attachment.—30 L. R. A. 127, note.

Injunction against attachment in another state.—21 L. R. A. 75, note.

(a) An attachment under act 1795, c. 56 (see Code, art. 9, §§ 3-9), is subject to a motion to quash by defendant, on ex parte affidavit showing a defect in the proceedings, as that the attachment was issued irregularly, not apparent on their face.—*Lamden v. Bowie*, 2 Md. 334.

(b) The original defendant never appears to the attachment, but to the capias, and hence he cannot question the attachment proceedings for a defect not apparent on their face, by a plea.—*Lamden v. Bowie*, 2 Md. 334.

### § 226. Grounds for quashing, vacating, or dissolving.

### § 227.—In general.

#### *Annotation.*

Quashing of writ for foreign attachment.—17 L. R. A. 87, note.

(a) A father, in contemplation of the marriage of his daughter, executed a deed conveying railroad mortgage bonds in trust to apply the income to the daughter for life, and to dispose of the fund, on the daughter's death, as directed by her will. The daughter executed a will, leaving all her property to her husband. The will was admitted to probate, and the lower court erroneously awarded to the husband one-third of the bonds in his own right and two-thirds as guardian of his two infant children, instead of giving the husband absolute title to all the bonds, and the bonds were registered in the name of the children and placed in the custody of a third person. *Held*, that the bonds, attached by creditors of the husband, should not be released from attachment on the ground that the court could not render a judgment under which the bonds could be sold under execution with safety to the third person, and the action of the court in giving the husband absolute title should be without prejudice to the rights of the attaching creditors.—*De Bearn*

v. De Bearn, 115 Md. 668, 81 Atl. 223, 227; Chaumet v. Same, Id.

(b) Where the statement of plaintiff's claim filed with his affidavit for an attachment embraced several causes of action, for some of which assumpsit was not the proper remedy, such fact is no ground for quashing the attachment. It should be allowed to stand for the recovery of those claims recoverable in assumpsit.—Boarman v. Israel, 1 Gill 372.

(c) For any apparent defect in a proceeding before the court, the attachment may be quashed upon suggestion of such defect to the court, either by the defendant himself, or by a third person claiming interest in the property attached.—Campbell v. Morris, 3 H. & McH. 535. [*Cited and annotated* in 35 L. R. A. 766, 771, on right of creditors to question validity of attachment; in 23 L. R. A. (N. S.) 540, on right of other claimants of property to intervene in attachment.]

#### § 228.—Nature or insufficiency of cause of action.

#### § 229.—Excessive claim.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 230.—Insufficiency or want of grounds of attachment.

##### Cross-Reference.

Effect of finding on issue of fraudulent conveyance, see "Fraudulent Conveyances," § 310.

(a) Code, art. 9, § 36, provides that an attachment may issue on an affidavit alleging (1) that the debtor is about to abscond from the state; or (2) that he has fraudulently disposed of his property; or (3) that the debt sued for had been fraudulently contracted. *Held*, that an attachment obtained on an affidavit alleging the first two grounds mentioned in the statute will be quashed, where there is a failure of evidence to support the allegations, though there is strong evidence in support of the third ground mentioned in the statute.—Dumay v. Sanchez, 71 Md. 508, 18 Atl. 890.

(b) The truth of the statements in an affidavit of a creditor suing out an attachment may be inquired into upon a motion to

quash the attachment.—Clarke v. Meixsell, 29 Md. 221. [*Cited and annotated* in 35 L. R. A. 767, 768, 771, 777, 778, on right of creditors to question validity of attachment; in 23 L. R. A. (N. S.) 540, on right of other claimants of property to intervene in attachment.]

#### § 231.—Want of jurisdiction.

##### Annotation.

Effect of foreign attachment.—17 L. R. A. 88, note.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 232.—Defects of irregularities in proceedings.

##### Annotation.

Right to amend affidavit.—31 L. R. A. 422, note.

(a) Code 1904, art. 9, § 18, provided that attachment might be laid on any interest which defendant had in the debts of any corporation, and that the officer in laying the attachment must comply with article 23, sections 391-401 of which were applicable only to domestic corporations, and were repealed by Laws 1908, c. 240 (Code 1911, art. 23, §§ 68, *et seq.*), which made provision for the attachment of shares of domestic corporations, but was silent on the subject of debts of corporations. *Held*, that article 9, § 18, did not justify the release of an attachment of registered railroad mortgage bonds of foreign railroad corporations, on the ground that the officer holding the attachment failed to comply with article 23 in laying it.—De Bearn v. De Bearn, 115 Md. 668, 18 Atl. 223, 227; Chaumet v. Same, Id. (See Code 1911, art. 9, § 18, and annotation thereto.)

(b) Objection to attachment proceedings on the ground that they do not show affirmatively that the requirements of the statute have been complied with may be made on a motion to quash or on a motion in arrest of judgment after verdict.—Coward v. Dillinger, 56 Md. 59.

(c) Though it is irregular to award an attachment for a greater sum than is established by the affidavit and account filed, such irregularity does not justify quashing the attachment.—Dawson v. Brown, 12 G. & J. 53.



**§ 233.—Fraud or collusion.***Cross-References.*

Intent of creditor affecting validity of attachment as to other creditors, see "Fraudulent Conveyances," § 155.

Transactions void as to creditors because intended or operating to hinder or defraud them, see "Fraudulent Conveyances," § 31.

*Annotation.*

Right of creditors to attack attachment for fraud and collusion.—35 L. R. A. 779, note.

**§ 234.—Pendency of other action or proceeding.***Annotation.*

Right of attachment as affected by appointment of foreign receiver.—23 L. R. A. 52, note.

Effect of insolvency proceedings in another state.—23 L. R. A. 35, note.

**§ 235.—Ownership of property attached.***Annotation.*

Non-ownership of attached property as ground for dissolution.—47 L. R. A. (N. S.) 1127, note.

**§ 236. Jurisdiction to quash, vacate, or dissolve.***Cross-Reference.*

Jurisdiction of federal court on removal of cause from state court, see "Removal of Causes," § 114.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 237. Persons entitled to move.***Cross-References.*

Rights of third persons, see post, § 291.

Assignees or trustees for benefit of creditors, see "Assignments for Benefit of Creditors," § 276.

**§ 238.—Defendant.***Cross-Reference.*

Estoppel or waiver, see post, § 239.

(a) Where a defect is apparent on the face of the proceedings, an attachment may be quashed upon suggestion of such defect to the court by the defendant, or a third person claiming an interest in the property.—Lambden v. Bowie, 2 Md. 334.

**§ 239.—Waiver or estoppel.***Cross-References.*

Claimants, see post, § 289.

Right of defendant to move, see ante, § 238.

**§ 240. Persons entitled to oppose.***Annotation.*

What creditors may question the validity of attachment.—35 L. R. A. 766, note.

Right of obligor in bond for release of attached property to attack attachment.—32 L. R. A. (N. S.) 401, note.

**§ 241. Time for attacking attachment.**

(a) A judgment condemning attached property cannot be vacated 12 years after its entry on motion, after an execution was issued, on defendant's ex parte affidavit alleging fraud in its procurement, the important parts of which are pronounced false by plaintiff.—Foran v. Johnson, 58 Md. 144.

(b) A motion to quash an attachment for a substantial defect in the proceedings goes to the question of jurisdiction, and will be entertained at any stage of the trial.—Eveson v. Selby, 32 Md. 340.

(c) After a judgment of condemnation has been rendered in attachment, if the defendant desire to move to quash the writ, regularly, he should first move to strike out the judgment and then make his motion.—Boorman v. Patterson, 1 Gill 372.

(d) A motion to quash an attachment for failure of the affidavit to state that plaintiff is a citizen of the United States, as required by act 1825, c. 114, may be made and sustained at any stage of the proceedings.—Bruce v. Cook, 6 G. & J. 345. (See Code, art. 9, § 1.)

**§ 242. Proceedings on motion.****§ 243.—Application in general.****§ 244.—Notice.****§ 245.—On original papers.****§ 246.—Affidavits in support of application.****§ 247.—Opposing and rebutting affidavits.****§ 248.—Issues and questions considered.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 249.—Evidence and effect of affidavits.***Cross-Reference.*

As to grounds for attachment, see ante, § 47.

(a) Upon an attachment under the act of 1795, c. 56 (see Code, art. 9, §§ 3-9), an ex

parte affidavit was filed to prove that the defendant was a resident of the state at the time the writ issued; and upon this affidavit a motion was made by the defendant's counsel to quash the writ, which the court below did. On appeal it was *held*, that, though the court might have received the motion on such an affidavit, yet if it was not admitted to be true, nor sustained by proper proof, the writ ought not to have been quashed, and that reasonable opportunity should have been afforded to produce testimony on the subject, which might have been taken by consent of parties, or under the direction of the court.—*Lambden v. Bowie*, 2 Md. 334.

(b) An attachment should not be dissolved on an ex parte affidavit of a third person, filed by defendant's attorney, based on a defect not apparent on the face of the proceedings, without an admission of its truth, or evidence to sustain the affidavit according to the practice in summary proceedings of like character.—*Lambden v. Bowie*, 2 Md. 334.

#### § 250.—Hearing and determination.

##### *Cross-Reference.*

Denial of motion as ground for new trial, see "New Trial," § 17.

(a) On motion to quash an attachment for the reason that the grounds assigned do not exist, plaintiff having the affirmative of the issue, is entitled to open and close the case.—*Johnson v. Stockham*, 89 Md. 368, 43 Atl. 943.

(b) The court may entertain a motion to quash an attachment for matter dehors the proceedings, and hear the evidence relating thereto, and decide thereon, without a jury.—*Gover v. Barnes*, 15 Md. 576.

#### § 251.—Judgment or order.

##### *Cross-References.*

Affirmance of order of discharge as fixing liability on bond, see post, § 334.

Right to renew motion after denial of one application, see ante, § 248.

Conclusiveness of judgment or order on motion, see "Judgment," § 569.

Denial of motion as ground for new trial, see "New Trial," § 17.

Mandamus to review, see "Mandamus," § 3.

Review, see "Appeal and Error," §§ 339, 347.

#### § 251(a).—Appeal and error.

(a) Upon a motion to quash an attachment, the appellant may assign other errors than those which are to be found in the record.—*Dickinson v. Barnes*, 3 Gill 485.

#### § 252. Motion to modify attachment.

##### *Annotation.*

Right to amend attachment proceedings.—31 L. R. A. 422, notes.

Amendment of claim or pleading as discharge of sureties on bonds given to dissolve attachments.—42 L. R. A. (N. S.) 484, note.

#### §§ 253-259. Pleading in abatement, or traverse of grounds of attachment.

##### *Cross-Reference.*

Stay of main action pending filing of bill of exceptions to ruling on plea, see "Action," § 68.

#### § 260. Actions to set aside attachment.

##### *Cross-Reference.*

Removal from state to federal court, see "Removal of Causes," § 11.

#### § 261. Discharge of attachment on security.

##### *Cross-References.*

Appraisal of property as determining amount of bond, see ante, § 172.

Liabilities on bonds, see post, §§ 330-354.

Agreement on release of attachment as one of guaranty, see "Guaranty," § 4.

#### § 262.—Right to release in general.

(a) Acts 1834, c. 79, § 2. (Code, art. 9, § 19), providing that an attachment against a nonresident shall not be dissolved, unless defendant gives bond, etc., simply requires the additional security of defendant's bond, but does not extend the time within which defendant must appear, nor does it permit defendant to appear at the second term of court, and have a judgment by default obtained against him set aside, and the attachment dissolved, on giving his bond.—*Walters v. Munroe*, 17 Md. 501.

#### § 263.—Form and requisites of security.

#### § 264.—Sufficiency of security.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 265. Dissolution by appearance and giving bail.

(a) Under act 1715, c. 40, and act 1834

(Code, art. 9, § 19), the defendant in a writ begun by an attachment of land may appear at any time during the first term and have the attachment dissolved, the object of the attachment being only to compel an appearance.—*Walters v. Munroe*, 17 Md. 501.

(b) Under the attachment law of 1715. (Acts 1715, c. 40), the defendant has a right to come in at any time during the term at which the attachment was returnable, and, by giving bail and appearance under the *capias*, dissolve the attachment, and plead to and defend the action.—*Walters v. Munroe*, 17 Md. 501. (See Code, art. 9, § 19.)

(c) Acts 1834, c. 79 (Code, art. 9, § 19), and Acts 1839, c. 39, requiring defendant to give bond before an attachment shall be dissolved, prevent the former practice, permitting the attachment to be dissolved on a nonresident defendant's appearance and his giving bail.—*Lamden v. Bowie*, 2 Md. 334.

(d) Where defendant in attachment appears at the trial term, and gives special bail after the garnishee has pleaded and issues have been joined on the plea, the attachment is dissolved.—*Wilson v. Starr*, 1 H. & J. 491.

#### § 266. Dissolution by causes subsequent to attachment.

##### *Cross-References.*

Effect of leaving property in possession of debtor, see ante, § 186.

By adjudication in bankruptcy, see "Bankruptcy," §§ 198-203.

Adjudication in insolvency, see "Insolvency," § 71.

#### § 267.— Proceedings in action.

##### *Cross-Reference.*

See ante, § 20.

(a) The result of an amendment of the short note so as to correct a misjoinder of defendant would be to quash the attachment.—*Hodges v. Ninth Nat. Bank*, 54 Md. 406. (See Code, art. 9, § 28.)

#### § 268.— Termination of action without judgment.

#### § 269.— Judgment for plaintiff.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 270.— Judgment for defendant.

(a) A verdict and judgment for the defendant in attachment upon the hearing dissolves the attachment by operation of law, and it can be revived only by a reversal of such judgment.—*Higgins v. Grace*, 59 Md. 365.

#### § 271.— Failure to issue, levy, or enforce execution.

#### § 272.— Death of party.

##### *Cross-Reference.*

Effect of allowance of claim by executor of debtor, see "Executors and Administrators," § 241.

#### § 273. Voluntary dismissal or withdrawal.

##### *Cross-References.*

Authority of counsel, see "Attorney and Client," § 101.

Consideration for agreement to dismiss, see "Contracts," § 62.

#### § 274. Abandonment.

##### *Cross-References.*

Of lien or levy in general, see ante, § 184.

Presentation of claim against estate of deceased judgment debtor as abandonment, see "Executors and Administrators," § 264.

#### § 275. Reinstatement.

#### § 276. Effect of dissolution.

##### *Cross-Reference.*

Effect on right of sheriff to poundage, see "Sheriffs and Constables," § 51.

(a) Where a writ and summons were issued, and a declaration or short note, expressing plaintiff's claim, was filed, according to Code, art. 9, § 9, and the summons was returned non est, and afterwards the attachment was quashed on petition of the defendant, *held*, that the whole proceeding, including the summons and short note, fell with the attachment.—*Randle v. Mellen*, 67 Md. 181, 8 Atl. 573.

#### § 277. Effect of discharge on security.

#### § 278. Return of property or other restitution.

(a) Where attachments were pending in the Superior Court of Baltimore City to subject bonds which the Court of Appeals had decreed to belong absolutely to petitioner, the Circuit Court as a court of equity properly denied a petition to have the bonds

awarded and paid over to him; since, if petitioner owed the debt sought to be enforced by the attachment, equity should not aid him in placing the bonds beyond the reach of creditors.—*De Galard v. Winans*, 115 Md. 604, 80 Atl. 1071.

### § 279. Damages and costs on dissolution.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## VIII. CLAIMS BY THIRD PERSONS.

### Cross-References.

Necessity of determining claimant's right before proceeding to final judgment in attachment suit, see ante, § 213.

In justice's court, see "Justices of the Peace," § 86.

Right of bailee to recover possession of property attached for debt of bailee's husband, see "Bailment," § 21.

Right of wife to interplead in attachment against husband, see "Husband and Wife," § 222.

Right to jury trial, see "Jury," § 16.

### § 280. Intervention in general.

#### Annotation.

Right of third persons who claim property to intervene in attachment action.—23 L. R. A. (N. S.) 536, note.

Rights of creditors to question validity of attachment by intervention and defense.—35 L. R. A. 772, note.

### § 281. Claims under attachment.

### § 282.—Rights of other creditors.

### § 283.—Application and proceedings thereon.

### § 284.—Rights acquired by filing claims.

### § 285.—Administration and distribution of assets.

### § 286. Claims or liens prior or superior to attachment.

#### Cross-Reference.

Rights of claimants of property attached, see post, § 294.

### § 287.—Right to assert.

#### Cross-Reference.

Establishment and sufficiency, see post, § 288.

(a) Where the proceeds of the sale of attached property are paid to the plaintiff on his giving a bond to indemnify the defendants and all other persons in case the suit is decided against him, it does not so change

the nature of the fund as to prevent a claimant from appearing in the attachment action and asserting his title to the property.—*Hall v. Richardson*, 16 Md. 396, 77 Am. Dec. 303.

(b) The attachment laws do not expressly authorize a claimant of property to appear to an attachment; yet claimants are permitted to interpose their claim against a judgment of condemnation. (See Code, art. 9, §§ 47 et seq.)—*Carson v. White*, 6 Gill 17. [*Cited and annotated in 23 L. R. A. (N. S.) 540, on right of other claimants of property to intervene in attachment.*]

(c) Certain personal property was attached under writ of attachment by the creditors of M., and, no person appearing to defend the suit or make claim, the property was condemned, upon which judgment a scire facias issued, and a sale took place. After the sale, R., who had notice of the service of the attachment, and who at that time notified the sheriff of his claim to the property attached, brought an action of trespass against the sheriff. *Held*, that he was not entitled to recover, he having failed to make any appearance or claim in the action.—*Ranahan v. O'Neale*, 6 G. & J. 298, 26 Am. Dec. 576. [*Cited and annotated in 23 L. R. A. (N. S.) 540, on right of other claimants of property to intervene in attachment.*]

### § 288.—Establishment and sufficiency.

(a) Where the proceeds of the sale of attached property are paid to the plaintiff on his giving a bond to indemnify the defendants and all other persons in case the suit is decided against him, it does not so change the nature of the fund as to prevent a claimant from appearing in the attachment action and asserting his title to the property.—*Hall v. Richardson*, 16 Md. 396, 77 Am. Dec. 303.

(b) Certain personal property was attached under writ of attachment by the creditors of M., and, no person appearing to defend the suit or make claim, the property was condemned, upon which judgment a scire facias issued, and a sale took place. After the sale, R., who had notice of the service of the attachment, and who at that

time notified the sheriff of his claim to the property attached, brought an action of trespass against the sheriff. *Held*, that he was not entitled to recover, he having failed to make any appearance or claim in the action.—*Ranahan v. O'Neale*, 6 G. & J. 298, 26 Am. Dec. 576. [*Cited and annotated in 23 L. R. A. (N. S.) 540, on right of other claimants of property to intervene in attachment.*]

### § 289.—Contest of attachment by claimant.

#### *Cross-Reference.*

Right to intervene, see post, § 291.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 290. Intervention to contest attachment.

#### *Cross-Reference.*

Right of trustee in bankruptcy as to pending actions against bankrupt, see "Bankruptcy," § 156.

### § 291.—Right to intervene.

#### *Cross-References.*

Choice of remedy, see post, § 302.

Contest of attachment by claimant, see ante, § 289.

Grounds for contest, see post, § 292.

Validity of statute granting right, see ante, § 2.

Right as to property conveyed in trust for creditors, see "Assignments for Benefit of Creditors," § 276.

#### *Annotation.*

Right of intervener in attachment to attack validity of service of process.—23 L. R. A. (N. S.) 1084, note.

(a) A creditor attached the property of his debtor, and two days thereafter the debtor applied for the benefit of the insolvent laws, and a trustee for creditors was appointed. Afterwards another creditor recovered a judgment against the debtor, and the judgment creditor issued an attachment by way of execution against the funds in the hands of the trustee, which funds were the proceeds of the sale of the property seized in the suit of the attaching creditor. *Held*, that the judgment creditor had such an interest in the funds as to entitle him to intervene in the attachment suit, and move to quash the attachment.—*Clarke v. Meixsell*, 29 Md. 221. [*Cited and annotated in 35 L. R. A. 767, 768, 771, 777, 778,*

on right of creditors to question validity of attachment; in 23 L. R. A. (N. S.) 540, on right of other claimants of property to intervene in attachment.]

### § 292.—Grounds for contest.

(a) The fact that a debtor requested one of his creditors to issue an attachment against him, so that the creditor might share with other creditors, is no reason for quashing the attachment on the ground that it is an unlawful preference.—*Collier v. Hanna*, 71 Md. 253, 17 Atl. 390. [*Cited and annotated in 26 L. R. A. 600, on right to attach property in hands of assignee for creditors; in 30 L. R. A. 486, on intent to defraud sustaining attachment.*]

### § 293.—Proceedings, hearing, and determination.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 294. Rights of claimants of property attached in general.

#### *Cross-References.*

Claims or liens prior or superior to attachment, see ante, §§ 286-289.

Effect of giving redelivery bond, see ante, § 191.

(a) Where the proceeds of the sale of attached property are paid to the plaintiff on his giving a bond to indemnify the defendants and all other persons in case the suit is decided against him, it does not so change the nature of the fund as to prevent a claimant from appearing in the attachment action and asserting his title to the property.—*Hall v. Richardson*, 16 Md. 396, 77 Am. Dec. 303.

(b) The attachment laws do not expressly authorize a claimant of property to appear to an attachment; yet claimants are permitted to interpose their claim against a judgment of condemnation.—*Carson v. White*, 6 Gill 17. [*Cited and annotated in 23 L. R. A. (N. S.) 540, on right of other claimants of property to intervene in attachment.*]

(c) Certain personal property was attached under writ of attachment by the creditors of M., and, no person appearing to defend the suit or make the claim, the property was condemned, upon which judg-

ment a scire facias issued, and a sale took place. After the sale, R., who had notice of the service of the attachment, and who at that time notified the sheriff of his claim to the property attached, brought an action of trespass against the sheriff. *Held*, that he was not entitled to recover, he having failed to make any appearance or claim in the action.—*Ranahan v. O'Neale*, 6 G. & J. 298, 26 Am. Dec. 576. [*Cited and annotated in 23 L. R. A. (N. S.) 540, on right of other claimants of property to intervene in attachment.*]

### § 295. Time for interposing claim to property.

(a) A claimant may appear in an attachment suit and assert his title to the proceeds of sale of attached property, made by order of the court, notwithstanding the fact that such proceeds have been paid over to the plaintiff upon his having given bond to indemnify the defendants "and all other persons" and the further fact that he is prosecuting another suit in the same court for the same cause.—*Hall v. Richardson*, 16 Md. 396, 77 Am. Dec. 303.

### § 296. Notice or demand by claimant, and affidavit of claim.

#### Cross-References.

Time of giving notice, see ante, § 295.

Variance between notice and complaint and proof in replevin for possession, see post, § 300.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 297. Summary proceedings to try claim.

(a) Under act 1876, c. 285 (Code, art. 9, §§ 47-49), prescribing the mode in which the claimant of personal property taken under attachment may procure a discharge thereof, the requirement of a bond to be given by the claimant in double the appraised value of the property attached necessitates an appraisal, whenever a claim of property shall be set up.—*Turner v. Lytle*, 59 Md. 199.

(b) An objection to the court's taking cognizance without a jury, and upon a motion to quash an attachment, of a claim of a third party to property attached, comes too late on appeal, when no such objection was

raised below, and there was an agreement for its trial by the court.—*Howard v. Oppenheimer*, 25 Md. 350; *Dean v. Same*, Id. 368. [*Cited and annotated in 23 L. R. A. (N. S.) 540, on right of other claimants of property to intervene in attachment.*]

(c) That a claimant of attached property is prosecuting another suit in the same court for the same cause does not prevent his appearing and asserting title to the property in the attachment case.—*Hall v. Richardson*, 16 Md. 396, 77 Am. Dec. 303.

(d) The owner of goods attached, if he has knowledge of the attachment and the taking of his property, whether regularly summoned or not, is compelled to come in and claim the property in order to prevent a judgment of condemnation; and, if he fails to do so, he has no remedy against the sheriff for selling it under a fi. fa. upon the judgment of condemnation.—*Trieber v. Blocher*, 10 Md. 14.

### § 298. Security by claimant for possession.

#### Cross-References.

Estoppel to claim property by giving forthcoming bond, see ante, § 294.

Liabilities on bonds, see post, §§ 330, 354.

(a) Under Acts 1876, c. 285 (Code, art. 9, § 48), prescribing the mode in which the claimant of personal property taken under attachment may, by filing a petition and giving bond, procure a discharge of the property, taking the bond in less than the amount prescribed neither works a total defeat of the claimant's right to recover, nor prevents an inquiry of damages.—*Turner v. Lytle*, 59 Md. 199.

### § 299. Indemnity to officer.

#### Cross-References.

Giving bond as waiver of defects in notice or demand, see ante, § 296.

Liabilities on bonds, see post, §§ 330-354.

Indemnity by plaintiff in attachment, see "Sheriffs and Constables," § 89.

### § 300. Actions by claimant for recovery of possession.

#### Cross-References.

Choice of remedy, see post, § 302.

Evidence to impeach affidavit, see ante, § 126.

By mortgagee, see "Chattel Mortgages," § 173.

Property taken under attachment as subject to replevin, see "Replevin," § 5.

(a) Replevin will not lie to recover property in possession of the sheriff under a writ of attachment against a third person.—*Baltimore, C. & A. Ry. Co. v. Klaff*, 103 Md. 357, 63 Atl. 360, 5 L. R. A. (N. S.) 495, 115 Am. St. Rep. 363.

**§ 301. Proceedings for establishment and determination of claims to property.**

*Cross-Reference.*

Abandonment of action, see "Action," § 70.

**§ 302.— Nature and form of remedy.**

(a) The garnishee and claimant in an attachment suit, who has elected to try his case upon motion to quash before the court, may, even after the evidence has been partly taken, dismiss his motion, and, by filing a plea, have the same question tried before a jury.—*Ferrall v. Farnen*, 67 Md. 76, 8 Atl. 819.

(b) Under act 1876, c. 285 (Code, art. 9, §§ 47-49), prescribing the mode in which the claimant of personal property taken under attachment may procure a discharge thereof, the requirement of a bond to be given by the claimant in double the appraised value of the property attached necessitates an appraisal, whenever a claim of property shall be set up.—*Turner v. Lytle*, 59 Md. 199.

(c) In attachment actions in which third parties interpose claims to the property seized, the case between the claimants and the attaching creditors may be docketed, and the title tried before a jury, before the court finally disposes of the attachment.—*Howard v. Oppenheimer*, 25 Md. 350. [*Cited and annotated* in 23 L. R. A. (N. S.) 540, on right of other claimants of property to intervene in attachment.]

(d) An objection to the court's taking cognizance without a jury, and upon a motion to quash an attachment, of a claim of a third party to property attached, comes too late on appeal, when no such objection was raised below, and there was an agreement for its trial by the court.—*Howard v. Oppenheimer*, 25 Md. 350; *Dean v. Same*, Id. 368. [*Cited and annotated* in 23 L. R. A. (N. S.) 540, on right of other claimants of property to intervene in attachment.]

(e) That a claimant of attached property is prosecuting another suit in the same court for the same cause does not prevent his appearing and asserting title to the property in the attachment case.—*Hall v. Richardson*, 16 Md. 396, 77 Am. Dec. 303.

(f) The owner of goods attached, if he has knowledge of the attachment and the taking of his property, whether regularly summoned or not, is compelled to come in and claim the property in order to prevent a judgment of condemnation; and, if he fails to do so, he has no remedy against the sheriff for selling it under a *fi. fa.* upon the judgment of condemnation.—*Triebler v. Blocher*, 10 Md. 14.

**§ 303.— Jurisdiction.**

*Cross-Reference.*

Jurisdiction of courts over replevin by claimant of property attached under process of another court, see "Courts," § 478.

**§ 304.— Parties.**

**§ 305.— Process or notice.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 306.— Pleading.**

(a) Under act 1876, c. 285 (Code, art. 9, § 48), prescribing the mode in which the claimant of personal property taken under attachment may procure a discharge of the property by filing a petition and giving bond, to entitle the claimant to recover damages it is not necessary that his petition should in terms claim them.—*Turner v. Lytle*, 59 Md. 199.

**§ 307.— Issues and questions considered.**

(a) Under act 1876, c. 285 (Code, art. 9, § 48), prescribing the mode in which the claimant of personal property, taken under attachment, may, by filing his petition and giving bond, secure a discharge thereof, upon the trial of the issue joined upon such claim, the question of damages as well as the right of property is to be settled.—*Turner v. Lytle*, 59 Md. 199.

**§ 308.— Evidence.**

(a) Where property was not in the actual possession of claimant at the time it was attached, the burden was upon claimant to

establish its right to property, the possession in another at the time being some evidence of title so as to require claimant to show a superior title.—*Lemp Brewing Co. v. Mantz*, 120 Md. 176, 87 Atl. 814.

### § 309.— Conduct of trial or hearing.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 310.— Questions for jury.

(a) Where the title of claimant to the property was put in issue in attachment proceedings, the jury had a right to pass upon the evidence offered to support such claim.—*Lemp Brewing Co. v. Mantz*, 120 Md. 176, 87 Atl. 814.

(b) The administrator of S.'s estate intervened as a claimant of property levied upon by a judgment creditor of L. and W. It appeared by the record of the judgment that L. and W. had sold the property to S. Proof was offered to the effect that S. had made the purchase for the use and benefit of L. and W., and that they had made the payment of purchase money so far as it had been made. In rebuttal to show acts of ownership over the property by S., the claimant offered in evidence a written lease made by S. to A., demising the property for a term of years, at a fixed yearly rent. *Held*, that the question of the fraud or bona fides of the lease was exclusively a question for the jury.—*Cecil Bank v. Snively*, 23 Md. 253.

### § 311.— Instructions.

### § 312.— Verdict or findings.

### § 313.— Damages.

(a) Acts 1876, c. 285 (Code, art. 9, § 48), provides for certain proceedings by a claimant of property attached or levied on, providing, among other things, that the petitioner, if successful, "shall be awarded his costs, and shall recover damage for the wrong and injury done him," etc. *Held*, that such damages are recoverable upon such proceeding, though not specially claimed in the petition, and although the bond given by the claimant is not for double the appraised value of the property as required.—*Turner v. Lytle*, 59 Md. 199.

(b) In case the property of a third person is taken under an attachment, and there has been a total deprivation of the property, the measure of damages is the value of the property taken, with interest on the amount to the time of trial.—*Corner v. Mackintosh*, 48 Md. 374.

(c) Where a plaintiff has become liable in damages for the original seizure of property by the sheriff, his liability continues for the subsequent sale of the property, which was but a legal incident of the seizure; for the natural results of a wrongful act are understood to include all the damage to the party of which such act was the efficient cause, though, in point of time, the damage did not accrue until some time after the act done, and proof of actual damage may extend to all facts which occur and grow out of the original injury, even down to the day of the verdict, excluding only such facts as not only happened since the institution of the action, but which furnish of themselves sufficient grounds for a distinct suit.—*Corner v. Mackintosh*, 48 Md. 374.

(d) In an action by a mortgagee against a creditor of the mortgagor for a wrongful attachment of the mortgaged goods, the defendant may prove, in mitigation of damages, that, at the time of the seizure under the attachment, there was rent in arrears due upon the premises occupied by the mortgagor in which the goods were, which was paid out of the proceeds of the sale of the property.—*Wanamaker v. Bowes*, 36 Md. 42. [*Cited and annotated in 29 L. R. A. (N. S.) 274, on exemplary damages in action for malicious prosecution or abuse of process in suing out attachment for collection of debt only.*]

(e) The goods of the plaintiff were wrongfully seized under an attachment, and after some time, returned greatly deteriorated in value. In an action of trespass de bonis asportatis by the plaintiff for such unlawful seizure, *held*, that evidence that the plaintiff's business was broken up, and she reduced to poverty and deprived of the means of support, was admissible to prove special damages, in addition to the ordinary measure of compensation and the allow-



ance for aggravation.—*Moore v. Schultz*, 31 Md. 418.

**§ 314.—Judgment and enforcement thereof.**

**§ 315.—Appeal.**

*Cross-Reference.*

Appellate jurisdiction as dependent on whether case involves freehold, see "Courts," § 219.

**§ 316.—Costs.**

**§ 317. Operation and effect of determination.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**IX. RETURN.**

*Cross-References.*

Directions for return on writ or warrant, see ante, § 153.

As evidence of value of goods in action for conversion, see "Trover and Conversion," § 39.

In justice's court, see "Justices of the Peace," § 86.

Liability of officer for failure to make return or making false return, see "Sheriffs and Constables," §§ 123, 124.

Necessity of return before rendering judgment in rem on service by publication, see "Judgment," § 807.

**§ 318. Necessity.**

(a) Where the officer is unable to serve the scire facias in the attachment, because no one is found in possession of the property attached, he should make a corresponding return.—*Barney v. Patterson*, 6 H. & J. 182.

**§ 319. Officer who must make.**

**§ 320. County or court to which return must be made.**

**§ 321. Time for making.**

*Annotation.*

First and last days in computing time on return, etc.—49 L. R. A. 223, note.

**§ 322. Form and requisites.**

(a) An officer's return of an attachment levied on certain land, *held*, not fatally defective for want of a sufficient description.—*Ressmeyer v. Norwood*, 117 Md. 320, 83 Atl. 347.

(b) A return by the marshal that he had attached the undivided half in certain tracts of lands, specifying them by name, "but

found a person in possession thereof, the same being wild and unimproved lands," is sufficient, if the writ contains the usual clause of scire facias, or defendant appears in the action.—*Manton v. Hoyt*, 43 Md. 254.

(c) The return of a sheriff that he had attached of the goods, etc., of defendant, "his life estate in all the lands got by his wife, supposed to be 450 acres," was defective in not describing with sufficient certainty the land attached, so as to lay a legal foundation for a judgment of condemnation.—*Fitzhugh v. Hellen*, 3 H. & J. 206.

**§ 323. Record.**

**§ 324. Amendment.**

*Annotation.*

See Code, art. 9, § 28.

(a) The sheriff may amend his return at any time during the trial, and before the jury retires, so as to make it conform to the facts, unless the rights of third persons have in the meantime attached.—*Main v. Lynch*, 54 Md. 658.

(b) After the close of service in an attachment case, plaintiff moved for leave to the sheriff to amend his return by stating that he had set up a copy of the short note at the court-house door on the day of the delivery to him of the attachment, and offered to prove the delivery to the sheriff of such short note, and that he had on the day of the delivery of the attachment to him set it up at the courthouse door. *Held*, that such amendment might be permitted so as to conform to the facts, and to certify all that it was the sheriff's duty to certify, the rights of third parties not having intervened.—*Main v. Lynch*, 54 Md. 658.

(c) The right of the officer to amend his return to an attachment to conform to the truth, and the right of the parties to have him make such an amendment, is a common-law right, in no way dependent on the provisions of Code, art. 75, § 35.—*Main v. Lynch*, 54 Md. 658.

(d) The court may, on application within the term, allow a sheriff to amend his return to an attachment.—*Boyd v. Chesapeake & Ohio Canal Co.*, 17 Md. 195, 79 Am. Dec. 646.

(e) The return of an attachment may be amended several years after the term at which it was made.—*Hutchins v. Brown*, 4 H. & McH. 498.

§ 325. Defects, objections, and waiver.

§ 326. Quashing or setting aside.

§ 327. Construction.

§ 328. Operation and effect.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 329. Failure to make.

(a) The failure of the officer to return the writ affords no presumption that it has not been served.—*Baldwin v. Wright*, 3 Gill 241.

## X. LIABILITIES ON BONDS OR UNDERTAKINGS.

### Cross-References.

Defenses between original parties, as affecting assignee of bond, see "Assignments," § 100.

Effect of bankruptcy, see "Bankruptcy," §§ 387, 433.

In justices' courts, see "Justices of the Peace," § 86.

Interest on undertaking to discharge attachment, see "Interest," § 39.

Liability of attachment plaintiff on bond not signed by him, see "Bonds," § 52.

Order in contempt proceedings against sureties imposing imprisonment in default of payment as constituting imprisonment for debt, see "Constitutional Law," § 83.

§ 330. Accrual or release of liability by breach or fulfillment of conditions.

§ 331.— Bonds or undertakings to procure attachment.

### Cross-Reference.

Limitations, see post, § 347.

(a) A justice of the peace not having power to require plaintiff, before issuing an attachment in a suit against a nonresident, to furnish a bond to prosecute the suit with effect, action cannot be maintained on such a bond.—*Snyder v. Gillott*, 81 Md. (Perkins' Ed.) XIII, unreported, 32 Atl. 245.

(b) Though the statutes prescribe that a bond in attachment shall be made payable to the state, yet where it is erroneously payable to defendant, and the attachment is dismissed, suit can be maintained on it.—*McLuckie v. Williams*, 68 Md. 262, 12 Atl. 1.

§ 332.— Forthcoming or delivery bonds.

§ 333.— Bonds or undertakings for release of property.

§ 334.— Bonds or undertakings to discharge attachment.

### Annotation.

Liability of officer's bond for failure to return money deposited to avoid execution of writ.—39 L. R. A. (N. S.) 577, note.

(a) In an action on a bond given under act 1854, c. 153, § 4 (Code, art. 9, § 19), to dissolve an attachment, it was shown by the record in the attachment case that defendant was a nonresident, and that judgment by default was given against him, though he was never summoned, or otherwise had notice of the proceedings against him, and never appeared. *Held*, that this judgment was void, and there could be no recovery on the bond.—*Clark v. Bryan*, 16 Md. 171.

§ 335.— Claimants' bonds for possession.

(a) In an action on a bond given by third parties to dissolve an attachment, it appeared from the record in the attachment case that defendant was a nonresident, and that judgment by default was entered against him, though he was never summoned, or otherwise notified of the case, and did not appear. *Held*, that, since the judgment was void, there could be no recovery on the bond.—*Clark v. Bryan*, 16 Md. 171.

§ 336. Rights and remedies of sureties.

§ 337. Discharge of sureties.

### Cross-Reference.

Effect of discharge of principal in insolvency proceedings, see "Insolvency," § 159.

### Annotation.

Effect upon surety on attachment bond, of judgment against principal.—40 L. R. A. (N. S.) 743, note.

(a) An attachment suit was brought by a subcontractor to recover for labor and material covered by his subcontracts, and also for extra service rendered under a special order. While his work was not completed within the time prescribed, it was accepted by the principal contractor and the owner. In the affidavit upon which the attachment was based an indebtedness of \$7,157.53 was

stated, and there was a certification as to the production of "the contracts, order, and accounts on and by which" defendants were alleged to be so indebted. The short note was in assumpsit, and made the contracts annexed thereto a part of the declaration, and also declared on the common counts. The voucher consisted of a statement summarizing the entire account, together with a number of itemized bills whose totals were included in the summary, an order for the extra work and materials, and two contracts under seal between plaintiff and the principal contractors, a credit being given for 30 per cent., which was to be retained under the contract until 30 days after the final completion of the building. Plaintiff amended the declaration by substituting for it the common counts alone with an ad damnum clause for \$10,000. *Held*, that the cause being originally in assumpsit notwithstanding allusion to the contracts, and embracing the common counts, the amendment which left intact a feature of the declaration which was sufficient to sustain the original cause of action was not a material alteration of the suit so as to release a surety on an attachment bond conditioned for payment by the principal of any judgment that could be recovered against it in the attachment proceeding.—*Warren Bros. Co. v. Kendrick & Roberts*, 113 Md. 603, 77 Atl. 847.

(b) An amendment of the short note by adding a claim for \$10,000 damages in lieu of the specific statement in the first instance of an indebtedness of \$7,157.53 and the elimination of the 30 per cent. credit by an amendment of the voucher, though modifying the proceeding, was not such a change as would discharge the surety, where the judgment finally rendered was upon the identical cause of action set forth in the short note and voucher, as they stood at the time of the execution of the bond, and the recovery was considerably less than the claim for which the suit was brought, since a surety whose obligation discharges from an attachment the assets of the debtor upon which the attaching creditor could securely rely will not be exempted from liability unless the situation as to which he contracted has been essentially changed without his

consent.—*Warren Bros. Co. v. Kendrick & Roberts*, 113 Md. 603, 77 Atl. 847.

(c) On trial of an action to recover freight claimed to be due plaintiffs as owners of a steamship, an amendment was allowed, against defendant's objection, making 16 other persons, part owners of the steamer, co-plaintiffs. *Held*, that this amendment released the sureties on the bond to dissolve the attachment.—*Furness v. Read*, 63 Md. 1.

### § 338. Extent of liability.

#### *Cross-References.*

Damages, see post, § 350.

Subrogation of surety on appeal to creditor's rights against surety on bond to dissolve attachment, see "Subrogation," § 7.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 339. Enforcement in attachment suit, or claimant's suit.

#### *Cross-Reference.*

Summary remedies, see post, § 340.

(a) Where judgment has been recovered against defendant in attachment, the creditor's cause of action against the obligors of a bond given for the dissolution of the attachment, and conditioned to satisfy any judgment that might be recovered against defendant in attachment, is one for liquidated damages, within Acts 1864, c. 6 (Balto. City Code, §§ 312, 313), authorizing plaintiff to take judgment at the first day of the term, on his filing an affidavit stating the true amount of defendant's indebtedness, and the writing or account by which defendant is indebted, unless defendant has filed a verified plea containing a good defense.—*McAllister v. Eichengreen*, 34 Md. 54.

### § 340. Summary remedies.

#### *Cross-References.*

Conclusiveness of judgment in action on bond, see post, § 350.

Enforcement in attachment suit, or claimant's suit, see ante, § 339.

### § 341. Actions.

#### *Cross-References.*

Election of other remedy, see "Election of Remedies," § 3.

Joinder of causes of action, see "Action," § 47.

(a) In an action on an attachment bond,

if defendants are liable, judgment should be given for the penalty of the bond to be released upon payment of the amount of liability thereunder.—*Warren Bros. Co. v. Kendrick & Roberts*, 113 Md. 603, 77 Atl. 847.

#### § 342.— Nature and form.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 343.— Right of action.

(a) Though the statutes prescribe that a bond in attachment shall be made payable to the state, yet where it is erroneously made payable to defendant, and the attachment is dismissed, suit can be maintained on it.—*McLuckie v. Williams*, 68 Md. 262, 12 Atl. 1.

(b) A justice of the peace not having power to require plaintiff, before issuing an attachment in a suit against a nonresident, to furnish a bond to prosecute the suit with effect, action cannot be maintained on such a bond.—*Snyder v. Gillott*, 81 Md. XIII (Perkins' Ed.), unreported, 32 Atl. 245.

#### § 344.— Conditions precedent.

(a) Defendant in attachment can recover the costs of such proceedings, as against the bondsmen, although he has not previously sued plaintiff in attachment for such costs; but he cannot recover other damages.—*McLuckie v. Williams*, 68 Md. 262, 12 Atl. 1.

#### § 345.— Defenses.

##### *Cross-Reference.*

Estoppel to plead defense, see "Estoppel," § 2.

#### § 346.— Jurisdiction and venue.

##### *Cross-Reference.*

Matters affecting jurisdiction in general, see "Courts," §§ 121, 188, 264, 303, 312.

#### § 347.— Time to sue and limitations.

##### *Cross-References.*

See "Limitation of Actions."

Accrual of liability by breach or fulfillment of conditions, see ante, §§ 330-335.

#### § 348.— Parties.

##### *Cross-Reference.*

To action by assignee or trustee for creditors, see "Assignments for Benefit of Creditors," § 275.

##### *Annotation.*

Who is real party in interest who must bring action on attachment bond.—64 L. R. A. 605, note.

Right of obligor in bond for release of attached property to attack attachment.—32 L. R. A. (N. S.) 401, note.

#### § 349.— Pleading.

#### § 350.— Evidence.

##### *Cross-Reference.*

Evidence of value of market price of property, see "Evidence," § 113.

#### § 351.— Damages.

##### *Cross-References.*

Extent of liability in general, see ante, § 338.

State laws as to measure of damages as authority in federal courts, see "Courts," § 363.

#### § 352.— Trial.

##### *Cross-References.*

Effect of overruling motion to dissolve on movant's right to recover damages for wrongful issuance, see ante, § 251.

As conversion, see "Trove and Conversion," § 5.

As waste, see "Waste," § 7.

Contribution among attaching creditors, see "Contribution," §§ 5, 7.

Effect of stipulation, see "Stipulations," § 14.

In justice's court, see "Justices of the Peace," § 86.

Liability of client for act of attorney, see "Attorney and Client," § 102.

Liability of judge for issuing attachment without affidavit and bond, see "Judges," § 36.

Liability of officer, see "Sheriffs and Constables," § 113.

Malicious attachment, see "Malicious Prosecution," §§ 10, 13, 25, 41.

Mortgagee's right of action for conversion against attachment creditors of mortgagor, see "Chattel Mortgages," § 170.

Responsibility for retaking property wrongfully taken, see "Obstructing Justice," § 3.

Wrongful attachment of exempt property, see "Exemptions," §§ 105-153.

#### § 353.— Judgment.

##### *Annotation.*

Form of judgment on attachment bond.—62 L. R. A. 442, note.

#### § 354.— Appeal and error.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## XI. WRONGFUL ATTACHMENT.

### § 355. Nature and ground of liability.

### § 356.— In general.

### § 357.— Wrongful suing out of attachment.

### § 358.— Invalid writ or warrant.

### § 359.— Defects or irregularities in proceedings.

### § 360.— Attachment quashed, vacated, dissolved, or abandoned.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 361.— Wrongful or excessive levy.

(a) Where in executing a writ of attachment, under instructions from the plaintiffs to attach particular property, the sheriff has become a trespasser, the plaintiffs are not relieved from liability for the action of the sheriff by reason of any private instructions given to the sheriff as to how the property was to be treated or disposed of. The question is not what the sheriff was privately instructed to do after the seizure, but what he was authorized to do by the command of the process placed in his hands, and what was actually done under that process.—*Corner v. Mackintosh*, 48 Md. 374.

### § 362. Persons entitled to damages.

#### *Cross-Reference.*

Right of garnishing creditor to sue one who has taken debtor's property from possession of garnishee under attachment, see "Garnishment," § 105.

### § 363.— In general.

(a) Where property which does not belong to defendant is attached, the owner has a right of action at once, and, being a stranger to the attachment suit, is not bound to intervene therein, and claim the goods, or await the determination of that suit, though he has the option to do so.—*Richardson v. Hall*, 21 Md. 399.

### § 364.— Estoppel or waiver.

#### *Cross-Reference.*

Release of right of action or damages, see "Release," §§ 12, 29.

### § 365. Persons liable.

#### *Annotation.*

Under what circumstances the wrongful levy of several attachments will render the attaching creditors jointly liable.—6 L. R. A. (N. S.) 598, note.

(a) Where, in executing a writ of attachment, under instructions from plaintiff to attach particular property, the sheriff became a trespasser, plaintiff is not relieved from liability for the action of the sheriff by reason of instructions given him as to how the property was to be treated after the seizure.—*Corner v. Mackintosh*, 48 Md. 374.

### § 366. Recovery or set-off of damages in attachment suit.

(a) Where a plaintiff has become liable in damages for the original seizure of property by the sheriff, his liability continues for the subsequent sale of the property, which was but a legal incident of the seizure; for the natural results of a wrongful act are understood to include all the damage to the party of which such act was the efficient cause, though, in point of time, the damage did not accrue until some time after the act done, and proof of actual damage may extend to all facts which occur and grow out of the original injury, even down to the day of the verdict, excluding only such facts as not only happened since the institution of the action, but which furnish of themselves sufficient grounds for a distinct suit.—*Corner v. Mackintosh*, 48 Md. 374.

(b) In case the property of a third person is taken under an attachment, and there has been a total deprivation of the property, the measure of damages is the value of the property taken, with interest on the amount to the time of trial.—*Corner v. Mackintosh*, 48 Md. 374.

(c) In an action by a mortgagee against a creditor of the mortgagor for a wrongful attachment of the mortgaged goods, the defendant may prove, in mitigation of damages, that, at the time of the seizure under the attachment, there was rent in arrears due upon the premises occupied by the mortgagor in which the goods were, which was paid out of the proceeds of the sale of the property.—*Wanamaker v. Bowes*, 36 Md. 42. [*Cited and annotated in 29 L. R. A. (N. S.) 274, on exemplary damages in action for malicious prosecution or abuse of process in suing out attachment for collection of debt only.*]

(d) The goods of the plaintiff were wrongfully seized under an attachment, and after some time, returned greatly deteriorated in value. In an action of trespass, *held*, that evidence that the plaintiff's business was broken up, and she reduced to poverty and deprived of the means of support, was admissible to prove special damages, in addition to the ordinary measure of compensation and the allowance for aggravation.—*Moore v. Schultz*, 31 Md. 418.

### § 367. Actions.

#### *Cross-References.*

Joinder of causes of action, see "Action," § 47.

Right to jury trial, see "Jury," §§ 11, 19.  
Survival of cause of action on death of party, see "Abatement and Revival," § 55.

### § 368.— Nature and form.

### § 369.— Defenses.

### § 370.— Jurisdiction and venue.

### § 371.— Time to sue and limitations.

### § 372.— Parties.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 373.— Pleading.

(a) In an action to recover damages for wrongfully depriving plaintiff of the use and possession of his goods by levy of an attachment thereon against a third person, time is not material, and plaintiff need not allege the time when the wrong was committed, under Acts 1856, p. 160, art. 2, § 111 (Code, art. 75, § 5).—*Richardson v. Hall*, 21 Md. 399.

(b) In an action to recover damages for wrongfully depriving the plaintiff of the use and possession of 100 barrels of flour, the plea averred that the flour was taken by a sheriff under an attachment on warrant against one H.; that the defendants in this suit were the plaintiffs in the attachment suit; that the sheriff took said flour into his custody as the property of said H.; and that said attachment suit is still pending. *Held*, on demurrer, that the plea was fatally defective in not denying that the flour was the property of the plaintiff in this suit, and in not averring that it was

the property of H.—*Richardson v. Hall*, 21 Md. 399.

(c) In an action to recover damages for depriving plaintiff of the possession and use of his goods, it is sufficient to aver that the act complained of was wrongfully done, in the form prescribed by Acts 1856, p. 168, c. 112, § 29 (see Code, art. 75, §§ 2 *et seq.*), without specifying the mode or manner in which it was done.—*Richardson v. Hall*, 21 Md. 399.

### § 374.— Evidence.

#### *Cross-Reference.*

Of value or market price of property, see "Evidence," § 113.

(a) In an action for wrongful attachment, evidence of profits derived by plaintiff from the conduct of his pool room run in connection with the store from which the goods were taken *held* properly excluded where the pool tables and their appurtenances were not taken and plaintiff continued to carry on some business on his pool tables.—*Sterling v. Marine Bank of Crisfield*, 120 Md. 396, 87 Atl. 697.

(b) In an action for the wrongful attachment of merchandise, the court properly refused to permit plaintiff to state from whom he purchased his stock.—*Sterling v. Marine Bank of Crisfield*, 120 Md. 396, 87 Atl. 697.

### § 375.— Damages in general.

#### *Cross-References.*

Against officer, see "Sheriffs and Constables," § 139.

For malicious attachment, see "Malicious Prosecution," §§ 66-69.

#### *Annotation.*

Loss of profits as element of damages by seizure under wrongful attachment.—52 L. R. A. 54, note.

(a) The measure of damages for the wrongful attachment of stock of merchandise is the value of the goods actually seized and the actual ascertainable loss of profits consequent upon the interruption of the merchant's business, but such profits do not include damage to his credit, since such damage is too uncertain and speculative to be a basis for recovery.—*Sterling v. Marine Bank of Crisfield*, 120 Md. 396, 87 Atl. 697.

(b) Where a plaintiff has become liable in damages for the original seizure of prop-

erty by the sheriff, his liability continues for the subsequent sale of the property, which was but a legal incident of the seizure; for the natural results of a wrongful act are understood to include all the damage to the party of which such act was the efficient cause, though, in point of time, the damage did not accrue until some time after the act done, and proof of actual damage may extend to all facts which occur and grow out of the original injury, even down to the day of the verdict, excluding only such facts as not only happened since the institution of the action, but which furnish of themselves sufficient grounds for a distinct suit.—*Corner v. Mackintosh*, 48 Md. 374.

(c) In case the property of a third person is taken under an attachment, and there has been a total deprivation of the property, the measure of damages is the value of the property taken, with interest on the amount to the time of trial.—*Corner v. Mackintosh*, 48 Md. 374.

(d) In an action by a mortgagee against a creditor of the mortgagor for a wrongful attachment of the mortgaged goods, the defendant may prove, in mitigation of damages, that, at the time of the seizure under the attachment, there was rent in arrears due upon the premises occupied by the mortgagor in which the goods were, which was paid out of the proceeds of the sale of the property.—*Wanamaker v. Bowes*, 36 Md. 42. [Cited and annotated in 29 L. R. A. (N. S.) 274, on exemplary damages in action for malicious prosecution or abuse of process in suing out attachment for collection of debt only.]

(e) The goods of the plaintiff were wrongfully seized under an attachment, and, after some time, returned greatly deteriorated in value. In an action of trespass de bonis asportatis by the plaintiff for such unlawful seizure, *held*, that evidence that the plaintiff's business was broken up, and she reduced to poverty and deprived of the means of support, was admissible to prove special damages, in addition to the ordinary measure of compensation and the allowance for aggravation.—*Moore v. Schultz*, 31 Md. 418.

### § 376.—Costs and attorney's fees as damages.

#### *Cross-References.*

Malicious attachment, see "Malicious Prosecution," § 67.

Right of attachment defendant's attorney to recover fees by action against plaintiff, see "Attorney and Client," § 27.

(a) In an action of trespass de bonis asportatis, for taking goods of plaintiff under an attachment issued on a judgment against another, the owner is not entitled to recover counsel fees paid in defending the property in the attachment proceedings.—*Jones v. Jones*, 48 Md. 391, 30 Am. Rep. 466.

### § 377.—Exemplary damages.

#### *Annotation.*

Recovery of exemplary damages in action on attachment bond for malicious prosecution or abuse of process in suing out attachment for collection of debt.—29 L. R. A. (N. S.) 275, note.

Exemplary damages for suing out attachment for collection of debt only.—29 L. R. A. (N. S.) 272, note.

### § 378.—Excessive damages.

#### *Cross-Reference.*

Amount of exemplary damages, see ante, § 377.

### § 379.—Questions for jury.

#### *Cross-Reference.*

In actions for malicious attachment, see "Malicious Prosecution," § 71.

### § 380.—Instructions.

### § 381.—Verdict or findings.

### § 382.—Judgment.

### § 383.—Appeal and error.

### § 384.—Costs.

## ATTAINDER.

#### *Cross-References.*

Bills of, see "Constitutional Law," § 197.  
Bills of, resolution of Senate expelling member, see "Constitutional Law," § 82.

Of husband, effect on rights of wife as to property conveyed to husband and wife, see "Husband and Wife," § 14.

#### *Annotation.*

1 Words and Phrases, 620, 621.

## ATTEMPT.

#### *Cross-References.*

Concurrent indictment for offense and for attempt to commit same offense, see "Indictment and Information," § 15.

To commit crime, see "Abortion," § 1; "Arson," §§ 13, 24; "Assault and Battery," § 61; "Bribery," "Burglary," §§ 11, 26, 41; "Criminal Law," § 44; "Escape," § 5½; "False Pretenses," § 21; "Forgery," § 19; "Homicide," §§ 25, 140, 256; "Incest," § 10; "Larceny," §§ 24, 66; "Perjury," §§ 14, 28; "Rape," §§ 15, 33, 53; "Receiving Stolen Goods," § 2; "Rescue," § 1; "Robbery," §§ 12, 18; "Sodomy," § 2; "Suicide," § 2.

To commit crime, conviction of attempt on indictment for commission of offense, see "Indictment and Information," § 190.

To commit crime, indictment or information in general, see "Indictment and Information," § 115.

*Annotation.*

1 Words and Phrases, 621.

### ATTENDANCE.

*Cross-References.*

At court as ground of exemption from service of process, see "Process," §§ 118-122.

At examination of bankrupt or others in bankruptcy proceedings, see "Bankruptcy," § 237.

At public schools, as basis of apportionment of fund, see "Schools and School Districts," § 19.

Compulsory attendance of pupils at school, see "Schools and School Districts," § 160.

Of jurors, see "Jury," §§ 73-75.

Of parties and witnesses on examination in supplementary proceedings, see "Execution," § 395.

Of witnesses, see "Witnesses," §§ 1-34.

Preventing attendance of party or witness as contempt of court, see "Contempt," § 12.

*Annotation.*

1 Words and Phrases, 627, 628.

### ATTESTATION.

*Cross-References.*

Liability for fraudulent attestation, see "Fraud," § 28.

Of application for patent, see "Patents," § 102.

Of assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 64.

Of award of arbitrators, see "Arbitration and Award," § 53.

Of bill or note, see "Bills and Notes," § 55.

Of contract for employment of teacher, see "Schools and School Districts," § 135.

Of copy of resolution of school board stating amount of tax levy, see "Schools and School Districts," § 103.

Of deed, see "Deeds," § 47.

Of lease, see "Landlord and Tenant," § 25.

Of mortgage, see "Chattel Mortgages," § 60; "Mortgages," § 58.

Of orders, see "Motions," § 56.

Of signatures to mining lease, see "Mines and Minerals," § 58.

Of tax deed, see "Taxation," § 765.

Of will, see "Wills," §§ 114-123, 143-145.

Proof of attestation as preliminary to introduction of writing in evidence, see "Evidence," § 374.

*Annotation.*

1 Words and Phrases, 628-630.

## ATTORNEY AND CLIENT.

### *Scope-Note.*

[INCLUDES the practice of law in any rank or branch of the profession; admission to practice, and privileges, disabilities, and liabilities incident to the office conferred; licenses and license fees and privilege and occupation taxes; regulation of professional conduct; and the relation between attorney and client, and their mutual rights, duties, and liabilities.

[EXCLUDES admissions and declarations by attorneys (see "Evidence"); privilege of professional communications (see "Witnesses"); representation of particular classes of persons (see "Infants"; "Insane Persons"; "Husband and Wife"; "Corporations"; and other specific heads); conduct of particular proceedings (see specific heads); and attorneys in other public offices (see "Judges"; "Clerks of Courts"; "Officers"). For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

#### I. The Office of Attorney.

##### (A) ADMISSION TO PRACTICE.

- § 1. Constitutional and statutory provisions.
- § 2. Rules of court.
- § 3. Jurisdiction to admit.
- § 4. Capacity and qualifications.



**I. The Office of Attorney—Continued.****(A) ADMISSION TO PRACTICE—Continued.**

- § 5. Application.
- § 6. Examination.
- § 7. Determination of right to admission.
- § 8. Oath.
- § 9. Certificate or license.
- § 10. Admission of practioners in different jurisdiction.
- § 11. Practioners not admitted or not licensed.

**(B) PRIVILEGES, DISABILITIES, AND LIABILITIES.**

- § 14. Nature of office in general.
- § 15. Privilege as party to suit.
- § 16. Privilege from arrest or service of process.
- § 17. Becoming bail or surety.
- § 18. Purchasing demands for suit.
- § 19. Acting for adverse parties.
- § 20. — In general.
- § 21. — After termination of relation.
- § 22. Acting in different capacities.
- § 23. Assignment as counsel by the court.
- § 24. Liability for costs.
- § 25. Liability for officers' fees.
- § 26. Liabilities to adverse parties and to third persons.
- § 27. Liabilities of third persons to attorneys.
- § 28. Licenses and taxes.
- § 29. Attorneys' clerks and agents.
- § 30. Partnership of attorneys.
- § 31. Bar associations.
- § 32. Regulation of professional conduct.
- § 33. Offenses in exercise of professional functions.

**(C) SUSPENSION AND DISBARMENT.**

- § 34. Tenure of office in general.
- § 36. Jurisdiction of courts.
- § 37. Grounds for suspension or for striking from roll.
- § 38. — Character and conduct in general.
- § 39. — Criminal offenses and conviction thereof.
- § 40. — Admission fraudulently procured.
- § 41. — Falsification or abstraction of records or papers.
- § 42. — Deception of court or obstruction of administration of justice.
- § 43. — Contempt of court.
- § 44. — Misconduct as to client.
- § 45. — Misconduct in other than professional capacity.
- § 46. Defenses.
- § 47. Proceedings.
- § 48. — Notice and preliminary proceedings.
- § 49. — Nature and form in general.
- § 50. — Conditions precedent.
- § 51. — Parties entitled to prosecute.
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**I. The Office of Attorney—Continued.****(C) SUSPENSION AND DISBARMENT—Continued.**

- § 53. — Evidence.
- § 54. — Trial or hearing.
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- § 56. — Judgment or order.
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- § 59. — Costs.
- § 60. Operation and effect.
- § 61. Reinstatement.

**II. Retainer and Authority.**

- § 62. Rights of litigants to act in person or by attorney.
- § 63. The relation in general.
- § 64. What constitutes a retainer.
- § 64(a) Effect of unauthorized acts.
- § 65. Proof of authority.
- § 69. — Necessity in general.
- § 70. — Presumptions.
- § 71. — Objections to authority.
- § 72. — Evidence of authority.
- § 73. — Warrant or other written authority.
- § 74. — Determination.
- § 75. Change and substitution.
- § 76. Termination of relation.
- § 77. Scope of authority in general.
- § 78. Employment and authority of counsel.
- § 79. Delegation of authority.
- § 80. Disposition of moneys or other property of client.
- § 81. Contracts on behalf of client.
- § 82. Notice and demand.
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- § 84. Submission of controversy without action.
- § 85. Confession of or consent to judgment.
- § 86. Stipulations and admissions.
- § 87. Commencement and conduct of litigation.
- § 88. — In general.
- § 89. — Bringing or defending and dismissal of action.
- § 90. — Control of process and service.
- § 91. — Interlocutory and incidental proceedings.
- § 92. — Conduct of trial.
- § 93. — Control of judgment.
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- § 95. — Control of judicial sale.
- § 96. — Prosecution of appeal or other proceeding for review.
- § 97. Receiving payment or security.
- § 98. — In general.
- § 99. — Mode or form of payment or security.
- § 100. — Satisfaction of judgment or execution.

**II. Retainer and Authority—Continued.**

- § 101. Settlements, compromises, and releases.
- § 102. Liabilities of client for injuries to adverse party or third persons.
- § 103. Ratification by client.
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- § 105. Negligence or malpractice.
- § 106. — Nature of attorney's duty.
- § 107. — Skill and care required.
- § 108. — Instructions of client.
- § 109. — Acts and omissions of attorney in general.
- § 110. — Collection of demands.
- § 111. — Unauthorized appearance.
- § 112. — Conduct of litigation.
- § 113. — Acting for party adversely interested.
- § 114. — Fraud.
- § 115. — Acts and omissions of partners and associates.
- § 116. Accounting and payment to client.
- § 117. — Liabilities in general.
- § 118. — Individual interest of attorney.
- § 119. — Acts or defaults of partners and associates.
- § 120. — Liability for interest.
- § 121. — Persons entitled.
- § 122. Dealings between attorney and client.
- § 123. — In general.
- § 124. — Payment of or security for compensation.
- § 125. Acquiring property adversely to interest of client.
- § 126. Summary remedies of client.
- § 127. Proceedings for accounting.
- § 128. Actions for money collected.
- § 129. Actions for negligence or wrongful acts.

**IV. Compensation and Lien of Attorney.****(A) FEES AND OTHER REMUNERATION.**

- § 130. Right to compensation in general.
- § 131. Statutory regulations.
- § 132. Services under assignment by court.
- § 133. Employment of attorney.
- § 134. Premature termination of relation.
- § 135. Performance of services.
- § 136. Persons entitled.
- § 137. Retaining fee.
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- § 139. Value of services.
- § 140. — In general.
- § 141. — Specific services and particular cases.
- § 142. Contracts for compensation.
- § 143. — Making, requisites, and validity.
- § 144. — Construction and operation.
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**IV. Compensation and Lien of Attorney—Continued.****(A) FEES AND OTHER REMUNERATION—Continued.**

- § 146. Contingent fees.
- § 147. — Requisites and validity of contract.
- § 148. — Construction and operation of contract.
- § 149. — Performance of contract.
- § 150. — Effect of premature termination or settlement of action.
- § 151. Contracts for division between attorneys, and apportionment.
- § 152. Reimbursement of expenses.
- § 153. Deductions and forfeitures.
- § 154. Retainer from funds in hands of attorney.
- § 155. Allowance and payment from funds in court.
- § 156. Summary remedies to compel payment.
- § 157. Actions for compensation.
- § 158. — Nature and form.
- § 159. — Grounds of action.
- § 160. — Conditions precedent.
- § 161. — Defenses.
- § 162. — Time to sue, and limitations.
- § 163. — Parties.
- § 164. — Process and appearance.
- § 165. — Pleading.
- § 166. — Evidence.
- § 167. — Trial.
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- § 169. — Appeal or error.

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- § 171. Nature of attorney's lien.
- § 172. Statutory provisions.
- § 173. Right to lien.
- § 174. — In general.
- § 175. — Nature of services or fees.
- § 176. — Effect of contracts.
- § 177. — Persons entitled.
- § 178. Proceedings to perfect.
- § 179. — In general.
- § 180. — Notice.
- § 181. Services or fees covered.
- § 182. Subject-matter to which lien attaches.
- § 183. Time when lien attaches.
- § 184. Priorities.
- § 185. Assignment of lien or claim.
- § 186. Waiver, loss, or discharge.
- § 187. Protection against assignment by client.
- § 188. Protection against settlement between parties.
- § 189. — In general.
- § 190. — Remedies of attorney.
- § 191. Protection against set-off between parties.
- § 192. Enforcement.

*Cross-References.*

- Absence of counsel as ground for continuance, see "Continuance," § 20; "Criminal Law," § 593.
- Absence of counsel as ground for new trial, see "Criminal Law," § 936; "New Trial," § 86.
- Absence of counsel as ground for opening default, see "Judgment," § 143.
- Absence of counsel as ground for opening or vacating judgment, see "Judgment," § 366.
- Absence of counsel from trial in general, see "Trial," § 21.
- Absence of counsel when instructions are given, see "Trial," § 221.
- Act authorizing bills of exceptions to be signed and sealed by attorneys as infringement of judicial prerogative, see "Constitutional Law," § 52.
- Admissions by attorney, see "Criminal Law," § 410; "Evidence," § 207.
- Advice of counsel as defense to action for false imprisonment, see "False Imprisonment," § 14.
- Advice of counsel as defense to criminal prosecution, see "Criminal Law," § 32.
- Advice of counsel as defense to perjury, see "Perjury," § 15.
- Advice of counsel as defense to proceedings for violation of injunction, see "Injunction," § 227.
- Advice of counsel as defense to prosecution for bribery, see "Bribery," § 10.
- Advice of counsel as defense to prosecution for larceny, see "Larceny," § 78.
- Advice of counsel as excuse for default, see "Judgment," § 143.
- Advice of counsel as evidence of probable cause for prosecution, see "Malicious Prosecution," § 25.
- Advice of counsel as to avoiding arrest, see "Criminal Law," § 353.
- Advice of counsel instituting prosecution as constituting probable cause, see "Malicious Prosecution," § 21.
- Affidavit by attorney as basis for impeachment of client, see "Witnesses," § 379.
- Amicus curiæ, see "Amicus Curie."
- Appearance of executor by attorney, see "Executors and Administrators," § 441.
- Appointment of counsel for accused, see "Criminal Law," § 641.
- Appointment of counsel for prosecution, see "Criminal Law," §§ 639, 640.
- Argument and conduct of counsel at trial, see "Criminal Law," §§ 699-730; "Trial," §§ 106-133.
- Argument of counsel on hearing on motion for new trial, see "Criminal Law," § 959.
- Assignment as including assignor's interest as attorney, see "Assignments," § 73.
- Attorney as necessary party to action on replevin bond, see "Replevin," § 132.
- Attorneys as necessary parties to suit on claims in which an interest has been assigned them, see "Assignments," § 129.
- Attorneys as public officers, see "Attorney General"; "District and Prosecuting Attorneys."
- Attorneys for absentees, see "Absentees," §§ 5, 7.
- Attorneys in fact, see "Principal and Agent."
- Champtertous transactions between attorney and client, see "Champerty and Maintenance," § 5.
- Change of venue for convenience of attorney, see "Venue," § 45.
- City attorney, qualifications of, see "Municipal Corporations," § 138.
- Client as necessary party in action to enforce lien on attorney's fee, see "Liens," § 22.
- Competency of attorney as witness in action by or against client, see "Witnesses," § 67.
- Competency of attorney as witness to chattel mortgage, see "Chattel Mortgages," § 60.
- Competency of attorney as witness to mortgage drawn by him, see "Mortgages," § 58.
- Competency of attorney as witness to will, see "Wills," § 116.
- Competency of attorney of party or person interested to testify as to transactions with person since deceased, see "Witnesses," §§ 140, 141.
- Contempt of court, see "Contempt."
- Contract for legal services with person not an attorney at law, see "Contracts," § 7.
- Contract with attorney as against public policy, see "Contracts," § 131.
- Contract with attorney to secure legislation, see "Contracts," § 126.
- Death or disability of counsel as ground for continuance, see "Continuance," § 12.
- Decision of attorney in advising parties as constituting opinion or award, see "Arbitration and Award," § 1.
- Declarations by attorney as evidence against client, see "Evidence," § 246.
- Delivery in escrow to grantee's attorney, see "Escrows," § 3.
- Delivery of mortgage to mortgagee's attorney, see "Mortgages," § 69.
- Embezzlement by attorney, see "Embezzlement," § 17.
- Exemption of law libraries from taxation, see "Taxation," § 226.
- Garnishment of funds held by attorney, see "Garnishment," § 53.
- Harmless error in refusing to allow counsel for accused to withdraw, see "Criminal Law," § 1166½.
- Incompetency or neglect of counsel for accused as ground for new trial, see "Criminal Law," § 920.
- Law schools, see "Colleges and Universities."
- Libel and slander concerning attorney, see "Libel and Slander," §§ 9, 107.
- Misconduct of counsel as ground for collateral attack on judgment, see "Judgment," §§ 509-516.
- Misconduct of counsel as ground for equitable relief against judgment, see "Judgment," §§ 441-444.
- Misconduct of counsel as ground for new trial, see "Criminal Law," § 936; "New Trial," §§ 29, 49, 91.

Misconduct of counsel as ground for opening or vacating judgment, see "Judgment," §§ 364, 373-376.  
 Misconduct of counsel as ground for setting aside default judgment, see "Judgment," § 143.  
 Mistake as to employment of counsel as ground for opening default, see "Judgment," § 143.  
 Mistake or negligence of counsel as ground for opening default, see "Judgment," § 143.  
 Negligence of attorney in examining abstract as slander of title, see "Libel and Slander," § 132.  
 Negligence of counsel as excuse for laches, see "Equity," § 79.  
 Negligence of counsel as ground for equitable relief against judgment, see "Judgment," § 437.  
 Negligence of counsel as ground for opening or vacating judgment, see "Judgment," § 368.  
 Negligence of counsel of accused as ground for reversal, see "Criminal Law," § 1186.  
 Negligence or incompetency of counsel as ground for new trial, see "New Trial," § 87.  
 Oral promise of indemnity by attorney, see "Frauds, Statute of," § 21.  
 Payment or transfer for legal services as preference by insolvent, see "Fraudulent Conveyances," § 126.  
 Persons entitled to inspection of corporate books and records, see "Corporations," § 181.  
 Presence of counsel at taking of depositions, see "Depositions," § 61.

Presumption from failure to call attorney as witness, see "Evidence," § 77.  
 Presumption that attorneys do their duty as officers of the court, see "Evidence," § 83.  
 Promise by attorney to pay judgment against client as within statute of frauds, see "Frauds, Statute of," § 33.  
 Representation by attorney in bankruptcy proceedings, see "Bankruptcy," § 24.  
 Representation of parties to arbitration, see "Arbitration and Award," §§ 31, 64.  
 Right of attorney to act as referee, see "Reference," § 37.  
 Right of attorney to bring suit in his own name on claims assigned to him without joining assignors, see "Assignments," § 129.  
 Right of fireman to counsel in removal proceedings, see "Municipal Corporations," § 198.  
 Right to representation by counsel in proceedings for removal of municipal officer, see "Municipal Corporations," § 159.  
 Statements to attorneys as self-serving declarations, see "Evidence," § 271.  
 Taking client's affidavit, see "Affidavits," § 5.  
 Title to and disposition of bank deposits by attorneys, see "Banks and Banking," § 130.  
 Unauthorized appearance by attorney as ground for equitable relief against judgment, see "Judgment," § 421.  
 Undue influence affecting validity of will, see "Wills," § 157.  
 Validity of will drawn by attorney named as executor, see "Wills," § 84.

## I. THE OFFICE OF ATTORNEY.

### (A) ADMISSION TO PRACTICE.

#### *Cross-References.*

Admission fraudulently procured as ground for disbarment, see post, § 40.  
 Attack on naturalization proceedings of applicant, see "Aliens," § 70.

### § 1. Constitutional and statutory provisions.

#### *Cross-References.*

Class legislation, see "Constitutional Law," § 208.  
 Deprivation of liberty or property without due process of law, see "Constitutional Law," § 275.  
 Encroachment by Legislature on judiciary, see "Constitutional Law," § 52.  
 Special privileges, see "Constitutional Law," § 205.  
 Vested right of law student to be admitted to the bar by meeting requirements in force when he began studies, see "Constitutional Law," § 92.

#### *Annotation.*

Constitutional privilege to practice law.—14 L. R. A. 581, note.

### § 2. Rules of court.

### § 3. Jurisdiction to admit.

(a) The power of regulating the admission of attorneys in the state belongs to the state, and not to the federal government.—In re Taylor, 48 Md. 28, 30 Am. Rep. 451.

(b) Where the act of the assembly does not warrant an appeal, and there is no power given for any remedy in such a case, the appeal will not be allowed, nor will the general special power of the Court of Appeals be exercised over the Superior Court in the exercise of its discretion as to who are qualified or competent to be admitted as attorneys.—State v. Johnston, 2 H. & McH. 160.

### § 4. Capacity and qualifications.

#### *Annotation.*

Right of women to practice law, see 21 L. R. A. 701, note; and as to practice of law by corporation, 32 L. R. A. (N. S.) 56, note.

(a) The right to practice law is not a natural right inherent in every one, entitling a female to admission to the bar inde-

pendent of legislative authorization.—In re Maddox, 93 Md. 727, 50 Atl. 487, 55 L. R. A. 298.

(b) Code of 1888, art. 10, § 3, providing that "any male citizen of Maryland" possessing specified qualifications might be admitted to practice law, was amended by act 1898, c. 139, so as to change the method of admission, without enlarging the class of persons entitled to admission. The article and its amendment deal throughout with the masculine gender. Code, art. 1, § 6, declares that "the masculine gender includes all genders except where such construction would be absurd or unreasonable." *Held*, that since females were not eligible to practice law at common law, and statutes in derogation thereof were to be strictly construed, females were not authorized to practice law under the statute or its amendment.—In re Maddox, 93 Md. 727, 50 Atl. 487, 55 L. R. A. 298. (For present law, making it possible for women to practice law in Maryland, see Code, art. 10, § 4.)

(c) Under act 1876, c. 264, § 3, limiting the privilege of admission as an attorney to white male citizens, a colored citizen of the state is not eligible.—In re Taylor, 48 Md. 28, 30 Am. Rep. 451. (For present statutory provision, see Code, art. 10, §§ 1-5.)

#### § 5. Application.

#### § 6. Examination.

##### *Cross-Reference.*

Exemption of certain students as grant of special privileges, see "Constitutional Law," § 205.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 7. Determination of right to admission.

(a) An appeal will not lie from the decision of a county court admitting an attorney to practice in that court.—State v. Johnson, 2 H. & McH. 160.

#### § 8. Oath.

##### *Cross-Reference.*

Jurisdiction of appellate court to allow filing of oath nunc pro tunc, see "Courts," § 206.

#### § 9. Certificate or license.

##### *Cross-Reference.*

Occupation tax, see post, § 28.

#### § 10. Admission of practitioners in different jurisdiction.

(a) Under Code of 1888, art. 10, providing that "any male citizen of Maryland" possessing specified qualifications might be admitted to practice law, the fact that § 6, as amended by act 1898, provides that members of the bar of other states may become members of the Maryland bar under certain conditions, will not authorize the admission of females who are members of the bar of other states.—In re Maddox, 93 Md. 727, 50 Atl. 487, 55 L. R. A. 298. (For present law, making it possible for women to practice law in Maryland, see Code, art. 10, § 4.)

#### § 11. Practitioners not admitted or not licensed.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§§ 12, 13. (Omitted from the classification used herein.)

#### (B) PRIVILEGES, DISABILITIES, AND LIABILITIES.

##### *Cross-References.*

Disqualification of counsel to act as judge, see "Judges," § 47.

Disqualification of counsel to act as justice, see "Justices of the Peace," § 57.

Disqualification to take client's affidavit for attachment, see "Attachment," § 90.

Disqualification to take depositions, see "Depositions," § 53.

Liability for contempt of court, see "Contempt," § 10.

Liability for violation of injunction, see "Injunction," § 228.

Right of Attorney General to engage in private practice, see "Attorney General," § 6.

Right of consul to act as attorney against government, see "Ambassadors and Consuls," § 3.

Right of judge to practice law, see "Judges," § 21.

Right of justice of the peace to practice law, see "Justices of the Peace," § 13.

#### § 14. Nature of office in general.

#### § 15. Privilege as party to suit.

#### § 16. Privilege from arrest or service of process.

#### § 17. Becoming bail or surety.

(a) An attachment will not be quashed because an attorney of the court was one of the sureties in an attachment bond given by plaintiffs, since this is not within the rule of court prohibiting attorneys from becoming

securities for costs on appeal bonds.—*Lewis v. Higgins*, 52 Md. 614. (See, Rule 40, Balto. City Rules C. L. Courts.)

**§ 18. Purchasing demands for suit.**

**§ 19. Acting for adverse parties.**

*Cross-References.*

As fraud on client, see post, § 113.

Counsel for prosecution, see "Criminal Law," § 639.

**§ 20.—In general.**

(a) A suit was instituted on a bond against the principal and surety thereon. An attorney appeared for defendants and filed a plea. Afterwards, without knowledge of the principal on the bond, on the direction of the surety, the attorney withdrew his plea, and permitted judgment by default to be taken, which judgment was assigned to the surety. The damages were assessed at over \$3,000, while the amount actually due on the bond was \$500, which the surety paid. His purpose in obtaining the assignment was to thereby collect from the principal moneys alleged to have been paid by him on the bond as surety. *Held*, that the judgment should have been stricken out on the motion of the principal made on his learning of it the day after the default, since the withdrawal of the plea was hostile to the principal, and in the interest of the surety, so as to make it impossible for them to be represented by the same attorney.—*Martindale v. Brock*, 41 Md. 571.

**§ 21.—After termination of relation.**

**§ 22. Acting in different capacities.**

**§ 23. Assignment as counsel by the court.**

*Cross-Reference.*

Provision in order allowing suit by poor person, see "Costs," § 133.

**§ 24. Liability for costs.**

**§ 25. Liability for officers' fees.**

(a) An attorney for nonresident clients procured the sheriff to serve sundry writs of attachment. He agreed that he would pay the sheriff such fees as he would be entitled to by law from the plaintiff. *Held*, that such attorney was liable for the fees.—*Maddox v. Cranch*, 4 H. & McH. 343.

**§ 26. Liabilities to adverse parties and to third persons.**

*Cross-Reference.*

For malicious prosecution, see "Malicious Prosecution," § 3.

**§ 27. Liabilities of third persons to attorneys.**

**§ 28. Licenses and taxes.**

*Cross-References.*

Right of unlicensed person to practice, see ante, § 11.

As impairing contract with state, see "Constitutional Law," § 136.

As interfering with vested right, see "Constitutional Law," § 92.

Constitutionality and validity of acts and ordinances imposing license taxes, see "Licenses," § 7.

Delegation of power to impose license taxes to municipalities, see "Licenses," § 6.

Power of municipality to impose license taxes, see "Licenses," § 5½.

Power of state to impose license taxes, see "Licenses," § 5.

Taxation of attorneys, see "Taxation," § 54.

Treaty as affecting practice in Indian Territory, see "Indians," § 33.

*Annotation.*

License tax on attorneys.—18 L. R. A. 409, note.

License to practice as a vested right to continue in practice.—8 L. R. A. (N. S.) 1272, note.

Validity of contract by unlicensed attorney.—12 L. R. A. (N. S.) 614, note.

Extent of restriction on right of unlicensed person to transact legal business for another.—24 L. R. A. (N. S.) 750, note.

**§ 29. Attorneys' clerk and agents.**

*Cross-Reference.*

Authority of clerk to acknowledge service of process, see "Process," § 67.

**§ 30. Partnership of attorneys.**

*Cross-References.*

Actions for fees, see post, § 163.

Liability to client, see post, § 119.

Right of client employing firm to services of particular member, see post, § 63.

Limitation of action for accounting, see "Limitation of Actions," § 95.

**§ 31. Bar associations.**

**§ 32. Regulation of professional conduct.**

**§ 33. Offenses in exercise of professional functions.**

*Cross-References.*

Practicing without license, see ante, § 11.

Embezzlement, see "Embezzlement," § 17.

Indictment, joinder of counts, see "Indictment and Information," § 129.

Instructions as to presumptions and burden of proof, see "Criminal Law," § 778.

Threatening letters, see "Threats," § 1.



**Annotation.**

Right of attorney at law to solicit business.—9 L. R. A. (N. S.) 282, note.  
 Validity of contract to procure legislative action.—4 L. R. A. (N. S.) 213, note.  
 Improper influence or interference with grand jury by attorneys.—28 L. R. A. 370, note.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**(C) SUSPENSION AND DISBARMENT.****Cross-References.**

Setting aside order of admission, see ante, § 7.  
 As affecting credibility as witness, see "Witnesses," § 344.  
 Conspiracy to secure disbarment, see "Conspiracy," § 3.  
 Ex post facto laws changing method of procedure for disbarment, see "Constitutional Law," § 199.  
 Malicious proceedings, see "Malicious Prosecution," § 25.  
 Suspension of judges, see "Judges," § 21.

**§ 34. Tenure of office in general.****§ 35. (Omitted from the classification used herein.)****§ 36. Jurisdiction of courts.****Cross-Reference.**

Original jurisdiction of appellate courts, see "Courts," § 206.

**§§ 37-45. Grounds for suspension or for striking from roll.****Cross-Reference.**

Conviction as condition precedent to disbarment, see post, § 50.

**Annotation.**

Withholding client's money or property as ground for disbarment.—19 L. R. A. (N. S.) 414, note.

**§ 46. Defenses.****Cross-Reference.**

Collateral attack on appointment of administrator, see "Executors and Administrators," § 29.

**§§ 47-52. Proceedings.****Cross-References.**

Pendency of proceedings in one state as affecting right to admission in another, see ante, § 4.  
 Ex post facto law, see "Constitutional Law," § 199.  
 Prohibiting proceedings, see "Prohibition," § 5.

**§§ 53-59. Evidence.****Cross-Reference.**

Use of depositions, see "Depositions," § 5.  
 Power of judge at chambers, see ante, § 36.

Right to trial by jury, see "Jury," § 19.  
 Effect of order setting aside default, see "Judgment," § 174.  
 Notice of application to open default, see "Judgment," § 155.

**§ 60. Operation and effect.****Cross-References.**

Entry of judgment after disbarment of attorney of record, see "Judgment," § 276.  
 Of disbarment of county attorney, see "District and Prosecuting Attorneys," § 2.  
 Of order setting aside default judgment of disbarment in another state as evidence, see "Judgment," § 174.  
 On credibility as witness, see "Witnesses," § 344.

**Annotation.**

Extent of restriction on right of disbarred attorney to transact legal business for another.—24 L. R. A. (N. S.) 755, note.

**§ 61. Reinstatement.****Cross-Reference.**

Mandamus to compel, see "Mandamus," § 29.

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**II. RETAINER AND AUTHORITY.****Cross-References.**

Contract as affecting right to compensation, see post, § 133.  
 Duty of attorney to disclose information at time of employment, see post, § 106.  
 Right to retaining fee, see post, § 137.  
 Action for breach of contract, burden of proof of fraud, see "Evidence," § 96.  
 Appearance for administrator at accounting, see "Executors and Administrators," § 471.  
 Appearance in state in rebellion of attorney for nonresident retained prior thereto, see "States," § 17.  
 Authority to demand release of mortgage, see "Mortgages," § 312.  
 Authority to make affidavit for attachment, see "Attachment," § 88.  
 Authority to make affidavit for bill of particulars, see "Pleading," § 323.  
 Authority to make affidavit of arrest, see "Arrest," § 23.  
 Authority to make affidavit to chattel mortgage, see "Chattel Mortgages," § 63.  
 Authority to serve notice of appeal, see "Appeal and Error," §§ 412, 424.  
 Authority to waive arraignment, see "Criminal Law," § 262.  
 Authority to waive client's exemption right, see "Exemptions," § 91.  
 Contract as stipulating for improper services, see "Contracts," § 123.  
 Contract to influence legislation, see "Contracts," § 126.

Delivery of chattel mortgage to mortgagee's attorney, see "Chattel Mortgages," § 66.  
 Delivery of contract to attorney of party signing as satisfying statute of frauds, see "Frauds, Statute of," § 117.  
 Effect of severance of action, see "Action," § 60.  
 Employment by agent, see "Principal and Agent," § 102.  
 Employment by board of education, see "Schools and School Districts," § 79.  
 Employment by charter commissioners, see "Municipal Corporations," § 45.  
 Employment by corporate officers or agents, see "Corporations," § 407.  
 Employment by county, see "Counties," §§ 61-102, 113.  
 Employment by county officers, see "Counties," § 114.  
 Employment by election officers, see "Elections," § 54.  
 Employment by executor or administrator, see "Executors and Administrators," § 97.  
 Employment by husband to sue for separate property, see "Husband and Wife," § 138.  
 Employment by municipal corporations, see "Municipal Corporations," § 214.  
 Employment by stockholder of corporation, see "Corporations," § 398.  
 Employment to protect rights of county in swamp lands, see "Public Lands," § 58.  
 Notice of retainer, see "Appearance," § 6.  
 Performance of contract to employ attorney permanently, see "Master and Servant," § 20.  
 Ratification of employment by agent, see "Principal and Agent," §§ 170, 171.  
 Representation of infant, see "Infants," § 90.  
 Representation of insane persons, see "Insane Persons," §§ 14, 96.  
 Representation of married woman, see "Husband and Wife," § 225.  
 Representation of party in justice's court, see "Justices of the Peace," § 84.  
 Right to appear as question for court, see "Criminal Law," § 734.  
 Sufficiency of affidavit by attorney on motion to open default, see "Judgment," § 159.  
 Unauthorized appearance as ground for equitable relief against judgment, see "Judgment," § 421.  
 Unauthorized appearance as ground for vacation of judgment, see "Judgment," § 352.  
 Unauthorized appearance, effect of in general, see "Appearance," § 15.  
 Want of authority to bring suit ground for dismissal, see "Dismissal and Non-suit," § 53.

## § 62. Rights of litigants to act in person or by attorney.

(a) In view of Code, art. 16, §§ 148, 188, 208, impliedly authorizing appearance in propria persona in suits in equity, permit-

ting a party to sign a petition for the rehearing of decrees or decretal orders, and allowing parties to agree in person to a special case stated, a purchaser of land at a foreclosure sale is entitled to file exceptions to a resale signed by himself alone, and the clerk of court has no right to refuse such exceptions because not signed by a solicitor.—*Aukam v. Zantzinger*, 94 Md. 421, 51 Atl. 93.

## § 63. The relation in general.

### Cross-Reference.

What constitutes a retainer, see post, § 64.

(a) Where one of two administrators employed counsel to foreclose a mortgage for the estate, and, though the other administrator took no part in the authorization, it appeared that he was aware of the employment of counsel, and did not disclaim their services, the facts showed counsel duly authorized to represent the estate.—*Ward v. Koenig*, 106 Md. 433, 67 Atl. 236.

(b) A request by a defendant that an attorney assist in the trial of the case, there being already an attorney of record, and an agreement to do so, establishes the relation of client and attorney between them, and authorizes the latter to appear as attorney in the case, and have his name entered on the docket with the other attorney.—*Smith v. Black*, 51 Md. 247.

## § 64. What constitutes a retainer.

### Cross-References.

Liability for fees depending on employment, see post, § 133.

Sufficiency to authorize summary proceedings against attorney, see post, § 126.

The relation in general, see ante, § 63.

(a) Defendant, together with other subscribers to stock in a corporation, signed an agreement by which the plaintiff was to institute and defend suits, and take such other action as might seem necessary to relieve defendant from his subscription; and, if he should be saved from such payment, defendant agreed to pay plaintiff a sum equal to 8 per cent. of the amount from which he was released, and also agreed to pay at once a sum amounting to 2 per cent. of his subscription to be applied first to expenses and costs incurred by plaintiff, and any bal-

ance to plaintiff in compensation for services. *Held*, that such agreement was a contract of employment, and not a mere offer to pay, under which plaintiff must act within a reasonable time, in order to bind defendant.—*Wheeler v. Harrison*, 94 Md. 147, 50 Atl. 523.

### § 64(a). Effect of unauthorized acts.

#### Cross-References.

See 5 Cent. Dig. Atty. and Client, §§ 88-90.

See post, § 77.

Appearance, see "Appearance," § 15.

Ground for dismissal, see "Dismissal and Nonsuit," § 53.

Ground for equitable relief against judgment, see "Judgment," § 421.

Ground for vacation of judgment, see "Judgment," §§ 372-376.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 65. Proof of authority.

§§ 66-68. (Omitted from the classification used herein.)

### § 69.—Necessity in general.

#### Cross-Reference.

In United States Court of Claims, see "Courts," § 460.

(a) Where an action by the state has been brought by one other than the state's attorney, it will not be presumed that it has been improperly brought, since there are exceptions (Code, art. 10, § 26) to the general rule that actions for the state must be brought by the state's attorney.—*McCauley v. State*, 21 Md. 556. [*Cited and annotated in 21 L. R. A. 848, on effect of judgment on unauthorized appearance.*]

### § 70.—Presumptions.

#### Cross-References.

Attorney for absentee, see "Absentees," § 5.

On appeal or writ of error, see "Appeal and Error," § 914.

Presumption that accused authorized attorney to bribe witness, see "Criminal Law," § 323.

(a) Where an heir was represented at the proceedings for probate by a duly authorized attorney, it will be presumed that the attorney's acts, within the scope of his duty in the progress of the trial, were done with the authority of the heir.—*Houston v. Wilcox*, 121 Md. 91, 88 Atl. 32.

(b) Where an attorney brings an action,

and appears for a party, the court presumes that the attorney has authority to do so, unless there has been fraud or imposition practiced, or the party has objected to the use of his name.—*Kelso v. Steiger*, 75 Md. 376, 24 Atl. 18. [*Cited and annotated in 21 L. R. A. 848, on effect of judgment on unauthorized appearance.*]

(c) In the absence of proof to the contrary, it will be presumed that an entry of a suit or judgment by the plaintiff's attorney to the use of a third party was made at the direction and by the authority of the plaintiff.—*Hager v. Cochran*, 66 Md. 253, 7 Atl. 462. [*Cited and annotated in 21 L. R. A. 848, on effect of judgment on unauthorized appearance.*]

(d) The authority of an attorney at law to appear will be presumed.—*Henck v. Todhunter*, 7 H. & J. 275, 16 Am. Dec. 300; *Bethel Church v. Carmack*, 2 Md. Ch. 143; *Kent v. Ricards*, 3 Md. Ch. 392; *Dorsey v. Kyle*, 30 Md. 512, 96 Am. Dec. 61.

(e) Where an action by the state has been brought by one other than the state's attorney, it will not be presumed that it has been improperly brought, since there are exceptions (Code, art. 10, § 26) to the general rule that actions for the state must be brought by the state's attorney.—*McCauley v. State*, 21 Md. 556. [*Cited and annotated in 21 L. R. A. 848, on effect of judgment on unauthorized appearance.*]

### § 71.—Objections to authority.

#### Cross-Reference.

Determination, see post, § 74.

(a) A bill was filed by an attorney in behalf of a corporation against a majority of the trustees of the corporation. Defendants, before answering, filed a petition contesting the authority of the solicitor who filed the bill, on the ground that only a minority of the trustees authorized it to be filed. It appeared there were nine trustees, three of whom authorized the suit. *Held*, that it was an error to dismiss the bill on such petition, without evidence, since the three members constituted a majority of a quorum, which might have authorized the suit.—*Bethel Church v. Carmack*, 2 Md. Ch. 143.

**§ 72.—Evidence of authority.****§ 73.—Warrant or other written authority.**

(a) An attorney need not have a warrant of attorney.—*Henck v. Todhunter*, 7 H. & J. 275, 16 Am. Dec. 300.

**§ 74.—Determination.***Cross-Reference.*

Objections to authority, see ante, § 71.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests; and references therein to Century Digest.

**§ 75. Change and substitution.***Cross-References.*

Compensation on premature termination of relation, see post, § 134.

In probate courts, see "Courts," § 202.

Discharge as defeating lien, see post, § 186.

Enforcement, see post, § 192.

**§ 76. Termination of relation.***Cross-References.*

Effect on right to fees, see post, §§ 134, 145.

Existence of relation at time of transaction between attorney and client, see post, §§ 123, 124.

Withdrawal of counsel ground for new trial, see "New Trial," § 86.

*Annotation.*

Effect of death on contract with attorney.—23 L. R. A. 710, note.

Power of defendant's attorney to withdraw appearance, see 33 L. R. A. 515, note.

(a) Where the attorney of complainant was appointed a trustee to sell the land in controversy, the relation of attorney and client ceased, and he had no power to consent to delay in the execution of the decree.—*Ward v. Hollins*, 14 Md. 158.

(b) A solicitor for complainant in a suit, who is by the decree appointed trustee to make a sale, does not thereafter stand in the relation of attorney to his client, so as to bind the latter by his acceptance of payments on the decree.—*Farmers' Bank v. Mackall*, 3 Gill 447.

(c) Withdrawal of appearance by attorney on leave of court is presumed to have been authorized by the client.—*Henck v. Todhunter*, 7 H. & J. 275, 16 Am. Dec. 300. [Cited and annotated in 33 L. R. A. 516, on power of attorney to withdraw answer or appearance and permit default judgment.]

(d) The death of a party to an action pending vacates the power of his attorney therein, and he is not required or authorized to do anything further in the action, except upon the retainer of the legal representative.—*In re Young*, 3 Md. Ch. 461.

**§ 77. Scope of authority in general.***Annotation.*

Attorney's authority over actions generally.—23 L. R. A. (N. S.) 702, note.

Right of attorney to purchase subject-matter of litigation or of retainer from client and his duty in relation thereto.—23 L. R. A. (N. S.) 679; 28 L. R. A. (N. S.) 723, notes.

(a) Attorneys have the authority to waive the right of appeal, especially where based on a consideration.—*Mackey v. Daniel*, 59 Md. 484.

(b) Where the attorney of a foreign creditor voluntarily unites in recommending a trustee for the debtor who has applied for the benefit of the insolvent laws, it will bind such creditor, although the effect proves to be the release of the debtor from the obligation.—*Jones v. Horsey*, 4 Md. 306, 59 Am. Dec. 81.

(c) A client is bound by the acts of her attorney within his general authority, in the absence of fraud, though there were no specific authority to do such acts.—*Kent v. Ricards*, 3 Md. Ch. 392. [Cited and annotated in 21 L. R. A. 850, on effect of judgment on unauthorized appearance.]

(d) Whatever is done in the progress of the cause is regarded as done by, and binding on, the party himself; the fidelity of the attorney in the discharge of his trust being a question between him and the party for whom he undertakes to act; the allegation of defendants that the plaintiffs' solicitor had no power to file the bill is not sufficient, without answer and evidence, to turn the plaintiffs out of court.—*Bethel Church v. Carmack*, 2 Md. Ch. 143.

(e) The attorney of record in a judgment has no authority to accept a deed of trust for his client.—*Doub v. Barnes*, 4 Gill 1.

**§ 78. Employment and authority of counsel.***Cross-References.*

Compensation in general, see post, § 133.

Lien in favor of counsel employed by attorney, see post, § 177.

Ratification, see post, § 103.

Authority of general attorney of railroad, see "Railroads," § 17.

Special authority to attorney to employ other attorneys, see "Principal and Agent," § 102.

#### *Annotation.*

Right of governor to employ attorney for state.—55 L. R. A. 493, note.

Power of president and vice-president of corporation to employ attorneys.—14 L. R. A. 360, note.

(a) Where plaintiff sold certain property and took a chattel mortgage thereon in part payment, and thereafter agreed to accept a return of the property, and release the purchaser, and placed the matter in the hands of his attorney for settlement, who empowered another attorney to sell the property on certain conditions, and to foreclose the mortgage, a purchaser from the second attorney was entitled to treat with him as authorized to make a sale, and, having paid the purchase price to him, was entitled to hold the property as against the owner.—*Dentzel v. City & Suburban Ry. Co.*, 90 Md. 434, 45 Atl. 201.

(b) Attorneys through whose labors a fund for the benefit of a corporation, consisting of a judgment, was obtained, and who conducted the action on a contingent fee by an agreement with the majority stockholders, to whom they supposed the claim belonged individually, are entitled to their fees as against the minority stockholders, who stood by, saw the work being done, and made no objection.—*Davis v. Gemmell*, 73 Md. 530, 21 Atl. 712; *Gemmell v. Poe*, Id; *Brydon v. Gemmell*, Id; *North Branch Co. v. Same*, Id. [*Cited and annotated* in 15 L. R. A. (N. S.) 729, on contingent attorney's fee in representative suit.]

(c) Where an action was against two defendants as joint tortfeasors, and the only counsel who appeared for defendants was employed by one of them with the assent of the other, who received the benefit of the counsel's service, the defendant who employed and paid the counsel may compel contribution from his co-defendant for half the amount expended.—*Percy v. Clary*, 32 Md. 245.

(d) A counselor employed by an attorney

in fact of a cestui que trust is not entitled to counsel fees out of the trust fund.—*Laroque v. Candolle*, 4 Md. Ch. 347.

#### § 79. Delegation of authority.

#### § 80. Disposition of moneys or other property of client.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 81. Contracts on behalf of client.

##### *Cross-References.*

Receiving conveyance in payment of debt, see post, § 99.

Stipulations, see post, § 86.

New promise extending period of limitation, see "Limitation of Actions," § 143.

##### *Annotation.*

Implied power of attorney to bind client for expenses incidental to trial, including associate counsel fees.—23 L. R. A. (N. S.) 702, note.

(a) An attorney either at law or in fact has no authority to make a lease or confirm an imperfect one, or to perfect an inchoate agreement for a lease of property of his principal or client, unless such authority is expressly given.—*Howard v. Carpenter*, 11 Md. 259.

(b) The employment of an attorney to institute an injunction suit does not confer on him the right to bind his clients to indemnify a third party who becomes surety on the injunction bond.—*White v. Davidson*, 8 Md. 169, 63 Am. Dec. 699.

(c) An attorney has no implied authority to bind his principal to an agreement to surrender a lien on land.—*Doub v. Barnes*, 1 Md. Ch. 127.

#### § 82. Notice and demand.

##### *Cross-References.*

Notice to attorney, see post, § 104.

Demand or request for release or satisfaction of mortgage, see "Mortgages," § 312.

Service of process by plaintiff's attorney, see "Process," § 51.

#### § 83. Submission to arbitration.

##### *Cross-Reference.*

Representation of parties to arbitration, see "Arbitration and Award," §§ 31, 64.

(a) It is within the general powers of an attorney at law to submit the suit of his client to arbitration or reference.—*White v. Davidson*, 8 Md. 169.

### § 84. Submission of controversy without action.

#### Annotation.

Power of attorney to bind client by consent decree.—46 L. R. A. (N. S.) 750, note.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 85. Confession of or consent of judgment.

(a) Counsel in a cause have authority to enter into an agreement permitting judgment to be entered for plaintiff subject to credit to be ascertained by referees.—*Farmers' Bank v. Sprigg*, 11 Md. 389.

### § 86. Stipulations and admissions.

#### Cross-References.

Admissions as evidence, see "Criminal Law," § 410; "Evidence," § 207.

Authority of client to enter into stipulation, see "Stipulations," § 4.

Declarations as evidence, see "Evidence," § 246.

Stipulations, construction and operation, see "Stipulations," § 14.

Stipulations, effect as evidence, see "Evidence," § 209.

Stipulations, form and requisites, see "Stipulations," § 13.

Stipulations, relief from, see "Stipulations," § 13.

Waiving process or notice on appeal or defects therein, see "Appeal and Error," § 429.

(a) Where plaintiffs, to secure certain payments, assigned a reversionary interest in an estate to defendants, and agreed that, in case of default, defendants might sell such reversion, and apply the proceeds to the payment of the debt and other expenses, any balance to be paid to plaintiffs, and it became necessary for defendants to institute legal proceedings to collect such reversion, defendant's attorney, in the absence of proof of authority, had no power to bind defendants by an admission that, in case defendants' claim proved to be less than the legacy, he would so draw the order that any balance should be paid to plaintiffs.—*Lyon v. Hires*, 91 Md. 411, 46 Atl. 985.

(b) The power of the attorney over the conduct of the cause is co-extensive with that of his client. He may agree not to demand a judgment, or stipulate for a cessat executio, and any violation of this agreement will give the opposite party title to

relief, as if the agreement was made with the express authority of the client.—*Kent v. Ricards*, 3 Md. Ch. 392. [Cited and annotated in 21 L. R. A. 850, on effect of judgment on unauthorized appearance.]

### § 87. Commencement and conduct of litigation.

#### Cross-References.

Liability for negligence or malpractice, see post, § 112.

Absence of counsel from trial in general, see "Trial," § 21.

Absence of counsel when instructions are given, see "Trial," § 221.

Authority of agent as to conduct of litigation, see "Principal and Agent," § 113.

Authority to make affidavit for arrest, see "Arrest," § 23.

Authority to make affidavit for attachment, see "Attachment," § 88.

Authority to make affidavit for bill of particulars, see "Pleading," § 323.

Authority to waive arraignment, see "Criminal Law," § 262.

Consent to special judge, see "Judges," § 16.

Effect of consent of counsel to trial of criminal prosecution as prevention of discharge of accused for delay, see "Criminal Law," § 376.

Signing pleadings, see "Pleadings," § 288.

Verifying pleadings, see "Pleading," §§ 298, 302.

Waiver of notice of appeal, see "Appeal and Error," § 429.

Withdrawal of appearance as ground for default judgment, see "Judgment," § 104.

### § 88.—In general.

(a) An attorney employed to assist in the trial of a case has authority to enter his appearance of record when the docket is called, though in the absence of the regular attorney of record.—*Smith v. Black*, 51 Md. 247.

(b) An attorney having charge of a claim may transfer it from the court his client has selected in which to prosecute the action, and submit it to commissioners of insolvency appointed by another court.—*Jones v. Horsey*, 4 Md. 306, 59 Am. Dec. 81.

### § 89.—Bringing or defending and dismissal of action.

#### Cross-References.

Lien or claim of attorney as preventing dismissal by client, see post, § 189.

Setting aside dismissal without authority and reinstatement of cause, see "Dismissal and Nonsuit," § 43.

(a) Possession of a note by the attorney for a party is possession by the party, in so far as the right to sue thereon is concerned.—*Kunkel v. Spooner*, 9 Md. 462. [Cited and annotated in 66 L. R. A. 517, on sufficiency of answers denying plaintiff's ownership of negotiable instruments.]

#### § 90.— Control of process and service.

##### *Cross-References.*

Appellate process, see "Appeal and Error," § 407.

Service on attorney, see "Process," § 58.  
Service of process by plaintiff's attorney, see "Process," § 51.

(a) An admission of service of process of garnishment or attachment by the attorney of a garnishee corporation signed by him, and returned with the writ, may be construed as a waiver of service on the company, and a consent by him to appear voluntarily in the cause for the garnishee. The authority of the attorney to waive service and give such consent will be presumed.—*Northern Cent. Ry. Co. v. Rider*, 45 Md. 24.

#### § 91.— Interlocutory and incidental proceedings.

##### *Cross-Reference.*

Necessity of giving notice of reference to party, see "Reference," § 27.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 92.— Conduct of trial.

##### *Cross-References.*

Liability of attorney for fees of expert witness, see ante, § 26.

Necessity for submission of requests for special findings to counsel, see "Trial," § 351.

Waiver of presence of accused, see "Criminal Law," § 636.

(a) The counsel in a cause may bind their clients by admissions and agreements of facts made for the purpose of the trial.—*Farmers' Bank of Maryland v. Sprigg*, 11 Md. 389.

(b) Whatever is done by the attorney in the progress of a trial is considered as done by the authority of the client, and is binding on him.—*Henck v. Todhunter*, 7 H. & J. 275, 16 Am. Dec. 300; *Thornburg v. Macaulay*, 2 Md. Ch. 425; *Bethel Church v. Carmack*, 2 Md. Ch. 143.

#### § 93.— Control of judgment.

##### *Cross-Reference.*

Termination of relation, see ante, § 76.

(a) An attorney who has recovered judgment for a client cannot file it as a claim in equity proceedings, and thus waive its lien, without the express authority or subsequent ratification of the client.—*Horsev v. Chew*, 65 Md. 555, 5 Atl. 466.

(b) Where, at the time a judgment is taken contrary to a former agreement, plaintiff's attorney agrees with defendant's attorney that the judgment shall be stricken out if defendant objects to it, the agreement will be binding.—*Kent v. Ricards*, 3 Md. Ch. 392. [Cited and annotated in 30 L. R. A. 789, on injunction against judgments obtained by fraud, accident, mistake, surprise and duress.]

(c) An attorney, after judgment or decree, has power by execution to collect the debt.—*Farmers' Bank v. Mackall*, 3 Gill 447.

#### § 94.— Control of execution.

##### *Cross-Reference.*

Authority to waive client's exemption rights, see "Exemptions," § 91.

(a) The plaintiff's attorney agreed with the defendant—First, that the suit should not be further prosecuted until there was an ascertained deficiency in certain assignments which he received from the latter, to pay the claim against him; secondly, when judgment was entered, he agreed with defendant's attorney that it should be stricken out if objected to by defendant; and, thirdly, when so objected to, he assured defendant the judgment should make no difference in the collection of the debts assigned, and that no execution should be issued upon it until such debts could be collected. It was held that it was clearly within the scope of the attorney's authority to make this agreement.—*Kent v. Ricards*, 3 Md. Ch. 392.

#### § 95.— Control of judicial sale.

(a) A stipulation entered into by the attorney for a party, agreeing to withdraw the appeal in consideration that the other party suspend the sale decree for a certain time, will be presumed to have been done by

the client's authority.—*Ward v. Hollins*, 14 Md. 158.

**§ 96.— Prosecution of appeal or other proceeding for review.**

*Cross-References.*

Liability of attorney, see post, § 112.  
Liability of attorney for cost of printing, see ante, § 26.  
Stipulation to abide by result of appeal in another case, see ante, § 86.  
Termination of authority on final judgment, see ante, § 76.  
Service of notice of appeal on attorney, see "Appeal and Error," §§ 412, 424.  
Signing appeal bond, see "Appeal and Error," § 385.  
Signing notice of appeal, see "Appeal and Error," § 417.

(a) An attorney has no right in his own name and on his own motion to appeal from an order or judgment of the trial court, affecting the interests of his client.—*National Park Bank v. Lanahan*, 60 Md. 477.

(b) An agreement by the defendants' solicitor to withdraw their appeal must, in the absence of proof to the contrary, be presumed to be made by the client's authority.—*Ward v. Hollins*, 14 Md. 158.

**§ 97. Receiving payment or security.**

*Cross-References.*

Accounting and payment to client, see post, §§ 117-121.  
Action by client for money collected by attorney, see post, § 128.  
Summary remedies by client to recover money collected by attorney, see post, § 126.  
Delivery of note to attorney as delivery to client, see "Bills and Notes," § 63.

**§ 98.— In general.**

(a) Where a solicitor to a complainant in a cause is appointed a trustee to manage the fund in controversy, and he receives money without authority as such trustee, and wastes the same, the payment to the trustee cannot be considered a payment to the complainant.—*Farmers' Bank of Maryland v. Mackall*, 3 Gill 447.

(b) Where a debtor delivered to the creditor's attorney certain bills and notes to collect, and apply the proceeds to the payment of the creditor's claim, the attorney becomes the agent of the debtor in relation to collection of said bills and notes, and is not subject to the direction of the original cred-

itor in respect thereto.—*Forbes v. Perrie*, 1 H. & J. 109.

**§ 99.— Mode or form of payment or security.**

*Cross-Reference.*

Sale of securities, see ante, § 80.

(a) An attorney who has received a claim for collection has not, in the absence of special authority, power to receive in payment of the claim anything but money.—*Kent v. Ricards*, 3 Md. Ch. 392; *Maddux v. Bevan*, 39 Md. 485. [*Cited and annotated in 31 L. R. A. (N. S.) 524, on implied power of attorney to compromise cause of action.*]

**§ 100.— Satisfaction of judgment or execution.**

(a) An attorney employed by the procureur of an infant who has no regular guardian may receive payment of the judgment, and satisfy the same.—*Baltimore & O. R. Co. v. Fitzpatrick*, 36 Md. 619. [*Cited and annotated in 3 L. R. A. (N. S.) 72, 73, on attorney's authority to satisfy judgment in minor's favor; in 11 L. R. A. (N. S.) 914, on right of next friend as to judgment recovered for infant.*]

(b) Payment to the attorney of the state is not a satisfaction of a judgment in its favor, and he has no power to release it.—*Peacock v. Pembroke*, 8 Md. 848.

**§ 101. Settlements, compromises, and releases.**

*Cross-Reference.*

Lien of attorney as protection against settlement by client, see post, § 189.

*Annotation.*

Power of attorney to compromise cause of action.—31 L. R. A. 573, note.

Implied power of attorney to compromise cause of action.—31 L. R. A. (N. S.) 523, note.

(a) A bondholder's attorney has no authority as such to waive payment of interest.—*Real Estate Trust Co. of Philadelphia v. Union Trust Co.*, 102 Md. 41, 61 Atl. 228; *Union Trust Co. v. Real Estate Trust Co. of Philadelphia*, Id; *McLane v. Union Trust Co.*, Id. [*Cited and annotated in 31 L. R. A. (N. S.) 524, on implied power of attorney to compromise cause of action.*]

(b) The owner of a judgment, who assigned it as security, entered his appear-



ance on the record as attorney for the assignee one day before the assignment was filed, and after the assignment entered a release of interest then due, styling himself "Attorney," without saying for whom. *Held*, that the question as to his authority as attorney was for the jury.—*Little v. Edwards*, 69 Md. 499, 16 Atl. 134.

(c) An attorney at law released a judgment lien which he had procured in favor of his client in a suit prosecuted by him. The client denied having authorized or ratified the release. The attorney's testimony upon the point was clear and explicit, and strongly fortified by circumstances, to which the client opposed a bare denial, unaccompanied by explanation of the circumstances. *Held*, that the authority must be presumed, although without the scope of the attorney's general employment.—*Fritchey v. Bosley*, 56 Md. 94.

(d) An attorney at law has no power, without express authority, to compromise or settle his client's claim.—*Hamburger v. Paul*, 51 Md. 219; *Fritchey v. Bosley*, 56 Md. 94.

(e) An attorney, without express authority, has no power to compromise a claim of his client by taking a note for a less amount than that due.—*Hamburger v. Paul*, 51 Md. 219. [*Cited and annotated in 31 L. R. A. (N. S.) 524, 529, on implied power of attorney to compromise cause of action; in 35 L. R. A. (N. S.) 54, on payment by commercial paper.*]

(f) An attorney has not, by virtue of his general retainer, any authority to accept satisfaction of a judgment for less than the sum due, or for such sum to transfer the judgment.—*Rohr v. Anderson*, 51 Md. 205. [*Cited and annotated in 31 L. R. A. (N. S.) 524, on implied power of attorney to compromise cause of action.*]

(g) An attorney has no power to compromise claims of his client by receiving a less sum, or any security for a less sum, than is due on them, without express authority from the client to that effect; and such compromise will not be binding on the client unless he has ratified it with full knowledge.—*Maddux v. Bevan*, 39 Md. 485. [*Cited and annotated in 31 L. R. A. (N. S.) 524, on*

implied power of attorney to compromise cause of action.]

(h) The courts will be slow to disturb an attorney's bona fide compromise of his client's cause not substantially prejudicial to his interests, and, if acquiesced in with a full knowledge of the facts, will refuse to do so.—*White v. Davidson*, 8 Md. 169.

(i) An attorney, either in law or in fact, has no power to bind his principal by an agreement to surrender a lien upon land, and to look exclusively to the trustees to whom a debtor has assigned his property in trust for his creditors.—*Doub v. Barnes*, 1 Md. Ch. 127.

## § 102. Liabilities of client for injuries to adverse party or third persons.

### Cross-Reference.

False imprisonment, see "False Imprisonment," § 15.

## § 103. Ratification by client.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 104. Notice to attorney.

### Cross-References.

Notice by attorney, see ante, § 82.

Of application for receiver, see "Receivers," § 35.

Of application to vacate judgment, see "Judgment," § 388.

Of contempt proceedings, see "Injunction," § 230.

Of motion to quash attachment, see "Attachment," § 244.

Of pendency of action, see "Lis Pendens," § 24.

Of preference as imputable to creditor, see "Bankruptcy," § 166.

Of reference, see "Reference," § 27.

Of witnesses against accused, see "Criminal Law," § 629.

Service of pleadings, see "Equity," § 322.

### Annotation.

Notice to attorney as notice to client.—2 L. R. A. 734, note.

(a) Parties to an action are affected by the actual or constructive knowledge of their solicitors.—*Shartzler v. Mountain Lake Park Ass'n*, 86 Md. 335, 37 Atl. 786.

(b) Balto. City Code, art. 88, § 28, provides that when a lot is chargeable with taxes, and subject to a lease for a term of years, renewable forever, the collector shall, in the sale of the lot for taxes, first sell only

the leasehold interest, provided the books of the city show that the lot is on lease, or the collector has "actual notice" thereof. *Held*, that the city collector was affected with "actual notice" of such a lease, when, after a decree for sale had been rendered in a proceeding to foreclose a mortgage on the leasehold, a petition was filed in such proceeding, signed by his attorney, and sworn to by his deputy, alleging that taxes were in arrears on the property "decreed to be sold," and praying that he might sell the property for taxes.—*City of Baltimore v. Whittington*, 78 Md. 231, 27 Atl. 984.

### III. DUTIES AND LIABILITIES OF ATTORNEY TO CLIENT.

#### *Cross-References.*

Misconduct as ground for disbarment, see ante, §§ 43, 44.  
 Contract inducing violation of duty to client, see "Contracts," § 131.  
 Enforcement of liabilities against exempt property, see "Exemptions," § 72.  
 Incompetency of counsel for accused as ground for new trial, see "Criminal Law," § 920.  
 Liability for deficiency on resale of property on mortgage foreclosure, see "Mortgages," § 523.  
 Liability for false imprisonment, see "False Imprisonment," § 15.  
 Misconduct as ground for collateral attack on judgment, see "Judgment," §§ 509-516.  
 Misconduct as ground for equitable relief against judgment, see "Judgment," §§ 441-444.  
 Misconduct as ground for new trial, see "New Trial," § 29.  
 Misconduct as ground for opening default, see "Judgment," § 143.  
 Misconduct as ground for opening or vacating judgment, see "Judgment," §§ 373-376.  
 Mistake as ground for new trial, see "Criminal Law," § 936; "New Trial," § 91.  
 Mistake as ground for opening or vacating judgment, see "Judgment," § 364.  
 Mistake as to terms of employment as excuse for not presenting defense as affecting right to equitable relief against judgment, see "Judgment," § 435.  
 Mistake or negligence as ground for opening default, see "Judgment," § 143.  
 Neglect of accused as ground for reversal, see "Criminal Law," § 1186.  
 Negligence and want of prosecution as ground for dismissal, see "Dismissal and Nonsuit," § 60.  
 Negligence as excuse for laches, see "Equity," § 79.

Negligence as ground for equitable relief against judgment, see "Judgment," § 437.  
 Negligence as ground for new trial, see "New Trial," § 87.  
 Negligence as ground for opening or vacating judgment, see "Judgment," § 368.  
 Negligence in examining abstract as slander of title, see "Libel and Slander," § 132.  
 Privileged communications, see "Witnesses," §§ 198-206.  
 Privileged communications in judicial proceedings, see "Libel and Slander," § 38.  
 Privileged communication to client concerning character of attorney, see "Libel and Slander," § 44.

#### § 105. Negligence or malpractice.

##### *Cross-Reference.*

Actions for negligence or malpractice, see post, § 129.

#### § 106.— Nature of attorney's duty.

#### § 107.— Skill and care required.

##### *Annotation.*

Liability of attorney to client for mistake.—52 L. R. A. 883, note.

#### § 108.— Instructions of client.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 109.— Acts and omissions of attorney in general.

##### *Cross-Reference.*

See post, § 129.

##### *Annotation.*

Liability of attorney to client for mistake.—52 L. R. A. 883, note.

(a) Defendant's attorney was requested to examine title for a loan, and correctly reported its condition on October 4th to the agent of plaintiff, who had employed him. The report was returned to him by the agent for signature and date on the 8th of October, and for an abstract of title. At request of the agent, he signed the same, and prepared an abstract of title from his notes, without further search, dating it to the knowledge and with consent of the agent as October 8th. Between October 4th and 8th the mortgagor confessed judgment to a third party, which did not appear in the abstract. The evidence was conflicting as to whether defendant had been previously engaged to act generally for plaintiff, or had been specially engaged by plaintiff's

agent to act only to the extent of examining the title; it being shown that the agent negotiated the loan, and in other respects took charge of the transaction. *Held*, that, as defendant was not liable for failure to bring the search down to the date of the execution of the mortgage unless he was employed for that purpose, plaintiff could not recover if defendant was engaged only to examine title.—*Watson v. Calvert Building & Loan Ass'n of Baltimore City*, 91 Md. 25, 45 Atl. 879.

**§ 110.—Collection of demands.**

**§ 111.—Unauthorized appearance.**

*Annotation.*

Authority of attorney to appear in action.—32 L. R. A. 681, 21 L. R. A. 848, notes.

(a) An attorney is liable for his unauthorized appearance to any party who may be injured thereby.—*Munnikuysen v. Dorsett*, 2 H. & G. 374; *Fowler v. Lee*, 10 G. & J. 358.

(b) If a party suffer any injury by an attorney's appearing for him without authority, he has a remedy by action against the attorney.—*Munnikuysen v. Dorsett*, 2 H. & G. 374.

**§ 112.—Conduct of litigation.**

*Annotation.*

Power of defendant's attorney to withdraw answer or appearance and permit a default judgment.—33 L. R. A. 515, note.

Right to withdraw from suit because of client's misconduct.—35 L. R. A. (N. S.) 960, note.

**§ 113.—Acting for party adversely interested.**

*Cross-References.*

As affecting right to compensation, see post, § 130.

Right to act for parties adversely interested in general and what constitute adverse interests, see ante, §§ 20, 21.

**§ 114.—Fraud.**

**§ 115.—Acts and omissions of partners and associates.**

*Cross-Reference.*

Acts or defaults of partners or associates, see post, § 119.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 116.—Accounting and payment to client.**

*Cross-References.*

Actions for money collected, see post, § 128.

Proceedings for accounting, see post, § 127.

Summary proceedings for money collected, see post, § 126.

**§ 117.—Liabilities in general.**

(a) If a party acts for another both as solicitor and as trustee, and receives money in the latter capacity, it is not by operation of law eo instante transferred to his hands as solicitor.—*Scott v. State*, 2 Md. 284.

**§ 118.—Individual interest of attorney.**

**§ 119.—Acts or defaults of partners and associates.**

**§ 120.—Liability for interest.**

*Annotation.*

Liability of attorney for interest on money collected for client.—18 L. R. A. 457, note.

**§ 121.—Persons entitled.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 122.—Dealings between attorney and client.**

*Cross-References.*

Contracts for compensation, see post, §§ 143-145.

Contracts for contingent fees, see post, §§ 147-150.

Termination of relation, see ante, § 76.

Equity jurisdiction to rescind sale, see "Equity," § 21.

Purchase of invention, see "Patents," § 95.

Validity of conveyance by accused to his attorney to prevent recovery of fine, see "Fraudulent Conveyances," § 300.

**§ 123.—In general.**

*Annotation.*

Transactions between attorney and client to be closely scrutinized.—9 L. R. A. 90, note.

(a) The assignment of a mortgage by a client to his attorney is presumptively void.—*Merryman v. Euler*, 59 Md. 588, 43 Am. Rep. 564.

(b) An attorney is under no actual incapacity to deal with or purchase from his client. All that can be required is that there has been no abuse of the confidence reposed, no imposition or undue influence

practiced, nor any unconscionable advantage taken by the attorney of the client.—*Roman v. Mali*, 42 Md. 513.

(c) Under act 1715, c. 48, § 9, requiring that bonds or other specialties taken by any attorney practicing law shall be indorsed for what matter or how the same became due, the indorsement cannot be made at any time after the execution of the bond.—*McFadon v. Martin*, 3 H. & McH. 153.

**§ 124.—Payment of or security for compensation.**

**§ 125. Acquiring property adversely to interest of client.**

*Cross-References.*

Attorney as constructive trustee, see "Trusts," § 103.

Presumptions as to validity as against client's creditors, see "Fraudulent Conveyances," § 278.

*Annotation.*

Right of attorney to purchase subject matter of litigation or of retainer from client, and his duty in relation thereto.—23 L. R. A. (N. S.) 679, note; 28 L. R. A. (N. S.) 723, note.

**§ 126. Summary remedies of client.**

*Cross-References.*

Summary remedies of attorney, see post, § 156.

Exclusive or concurrent jurisdiction of state and federal courts, see "Courts," § 489.

Reference on motion to compel attorney to pay over moneys of his client, see "Reference," § 14.

*Annotation.*

Right of client to maintain trover or case for money collected by attorney.—20 L. R. A. (N. S.) 35, note.

**§ 127. Proceedings for accounting.**

*Cross-References.*

Actions for money collected, see post, § 128.

Right to body execution, see "Execution," § 423.

Set-off of unliquidated claim for services, see "Set-off and Counterclaim," § 35.

**§ 128. Actions for money collected.**

*Cross-References.*

Proceedings for accounting, see ante, § 127.

Bringing in suit in name of real party in interest, see "Parties," § 6.

General statute of limitations, see "Limitation of Actions," §§ 25, 28, 66, 95, 104, 105, 199.

Interpleader by attorney, see "Interpleader," §§ 10, 11.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 129. Actions for negligence or wrongful acts.**

*Cross-References.*

Construction and operation of verdict, see "Trial," § 343.

Counterclaim, see "Set-off and Counterclaim," § 34.

Joinder of causes of action, see "Action," §§ 45, 48.

Set-off of unliquidated claim for damages against attorney in action on note, see "Set-off and Counterclaim," § 35.

Survival on death of party, see "Abatement and Revival," § 55.

(a) Where an attorney sued for loss arising from his failure to report the existence of a judgment against the mortgagor by reason of which a deficiency arose on sale of the mortgaged premises, defendant was not entitled to an instruction that, if the jury found that the mortgagee might have compelled the judgment creditor to have collected his judgment out of other property belonging to the mortgagor, and failed to do so, the mortgagee could not recover, since defendant could not compel a marshaling of assets between the mortgagee and such judgment creditor.—*Watson v. Calvert Building & Loan Ass'n of Baltimore City*, 91 Md. 25, 45 Atl. 879.

(b) In an action against an attorney for giving improper advice, the court erred in refusing to charge for defendant that if they believed from the evidence that plaintiffs' testator had acted from certain other motives, and not by reason of the advice given him by defendant, then plaintiffs were not entitled to recover; there being some evidence to support the hypothesis.—*Cochrane v. Little*, 71 Md. 323, 18 Atl. 698.

(c) In an action for damages against an attorney at law for giving improper advice, the declaration is sufficient if it sets forth that plaintiff employed defendant, as an attorney, to advise him; that defendant gave him improper, unskillful, ignorant, and negligent advice (setting forth the advice as given); that plaintiff, relying on defendant's ability as an attorney, acted on his advice; and that, by reason thereof, he has

suffered certain damages, etc.—*Cochrane v. Little*, 71 Md. 323, 18 Atl. 698.

(d) In action against an attorney for giving improper advice, it was not error to admit the testimony of other lawyers as to whether or not, in their opinion, the advice given by defendant was such as a prudent, careful lawyer, of ordinary capacity and intelligence, would or ought to have given, under the circumstances.—*Cochrane v. Little*, 71 Md. 323, 18 Atl. 698.

(e) Where an attorney receives a bond for collection, and thereupon advances money to his client, for which he receives his client's personal note, with the privilege of retaining the amount of it from the proceeds of collections on the bond, the attorney's failure to collect the bond is not a defense available to the client in an action on his note, but his remedy is by a separate action for damages resulting from the attorney's neglect of duty.—*Brewster v. Frazier*, 32 Md. 302.

#### IV. COMPENSATION AND LIEN OF ATTORNEY.

##### (A) FEES AND OTHER REMUNERATION.

###### *Cross-References.*

Allowance by appellate court, original jurisdiction to allow, see "Courts," § 206.  
 Allowance in admiralty, see "Admiralty," § 124.  
 Allowance in court of claims, see "Courts," § 460.  
 Allowance in probate court, see "Courts," § 202.  
 Appealability of order awarding compensation to counsel in criminal prosecution, see "Criminal Law," § 1023.  
 As claim against estate of decedent, see "Executors and Administrators," § 268.  
 As counterclaim in action for rent, see "Landlord and Tenant," § 223.  
 As element of amount in controversy in determining jurisdiction, see "Appeal and Error," § 59; "Courts," §§ 121, 169; "Justices of the Peace," § 44; "Removal of Causes," § 74.  
 As element of damage for wrongful attachment, see "Attachment," § 376.  
 As element of damage on injunction bond, see "Injunction," § 252.  
 As element of damages in general, see "Damages," §§ 71-73.  
 As element of damages for breach of covenant, see "Covenants," § 132.  
 As element of damages for wrongful injunction, see "Injunction," § 261.  
 As element of damages in replevin, see "Replevin," §§ 80, 83.

As items of costs, see "Costs," §§ 172, 173, 252.  
 Assignment of attorney's fee, right of assignee, see "Assignments," § 100.  
 Assignment of part of claim to attorney, see "Assignments," § 46.  
 Assignment of part of judgment as compensation, see "Judgment," §§ 838, 844.  
 Authority of agent of administrator to pay compensation to attorney, see "Principal and Agent," § 106.  
 Bills and notes providing for attorneys' fees, see "Bills and Notes," §§ 110, 126, 160.  
 Bond in replevin as covering liability for attorney's fees, see "Replevin," § 124.  
 Bond on appeal liability of sureties, see "Appeal and Error," § 1234.  
 Bond to secure payment of note as including attorney's fees in note, see "Bonds," § 62.  
 Champertous transactions, see "ChamPERTY and Maintenance," § 5.  
 Chattel mortgage securing fees, see "Chattel Mortgages," § 115.  
 Contempt proceedings in aid of attorney's claim after assignment of judgment, see "Execution," § 418.  
 Contract of indemnity as covering attorney's fees, see "Indemnity," § 9.  
 Enforcement against homestead, see "Homestead," § 97.  
 Expenditures for counsel fees by executor or administrator, see "Executors and Administrators," §§ 111, 485.  
 Expenditure for counsel fees by guardian, see "Guardian and Ward," § 58.  
 Expenditures for counsel fees by receiver, see "Receivers," §§ 99, 194.  
 Expenditures for counsel fees by trustee, see "Trusts," §§ 227, 313.  
 Indictment for forgery of note stipulating for attorney's fees, see "Forgery," § 26.  
 Interest on compensation, see "Interest," §§ 19, 22, 38, 39, 46, 47.  
 Lease providing for fees, see "Landlord and Tenant," § 238.  
 Liability of borrowing stockholder of insolvent building and loan association, see "Building and Loan Associations," § 42.  
 Liability of grantee assuming mortgage for attorney's fees provided for in note, see "Mortgages," § 284.  
 Liability of husband for counsel fees of wife, see "Husband and Wife," § 19.  
 Liability of infant, see "Infants," § 49.  
 Liability of stockholders, see "Corporations," § 238.  
 Liability of sureties, see "Principal and Surety," § 73.  
 Mortgage securing attorney's fees, see "Chattel Mortgages," § 25; "Mortgages," §§ 19, 125.  
 Necessity that attorneys for parties suing or defending in forma pauperis act without compensation, see "Costs," §§ 128, 132, 133.  
 Of attorney for absentee, see "Absentees," § 5.

Of attorney in employ of county, see "Counties," § 207.  
 Payment as conditions on opening default judgment, see "Judgment," § 169.  
 Preference by payment or transfer of property for services to be rendered, see "Bankruptcy," § 170; "Fraudulent Conveyances," § 126.  
 Preference in assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 124.  
 Priority of claims against insolvent corporations, see "Corporations," § 566.  
 Priority of claims on dissolution of corporation, see "Corporations," § 627.  
 Refusal of payment of fees of as estopping party to ask for continuance for absence of, see "Criminal Law," § 593.  
 Review of decisions, see "Appeal and Error," § 709.  
 Review of discretion of lower court allowing attorneys' fees as costs, see "Appeal and Error," § 984.  
 Warrant or power of attorney to confess judgment, or statement of indebtedness providing for fees, see "Judgment," § 59.

*Recovery in particular actions or proceedings.*

See "Creditors' Suit," § 59; "Garnishment," § 191; "Insolvency," § 188; "Partition," § 114; "Replevin," § 117.  
 Against railroad companies, see "Railroads," § 29.  
 Between stockholders and corporation, see "Corporations," § 189.  
 By creditors of corporation, see "Corporations," § 548.  
 By stockholders in behalf of corporation, see "Corporations," § 214.  
 Condemnation proceedings, see "Eminent Domain," § 265.  
 Criminal prosecutions, allowances, see "Costs," §§ 286, 295, 308.  
 For divorce, see "Divorce," §§ 196-198, 221-229.  
 For dower, see "Dower," § 111.  
 Inquisitions of lunacy, see "Insane Persons," § 28.  
 On bill or note, see "Bills and Notes," § 534.  
 On bonds in general, see "Bonds," § 137.  
 On insurance policy, see "Insurance," §§ 675, 834.  
 Probate proceedings and actions relating to wills or probate, see "Wills," §§ 413-416.  
 To appoint receiver for corporation, see "Corporations," § 557.  
 To construe will, see "Wills," § 707.  
 To dissolve injunction, see "Injunction," § 186.  
 To distribute estate assigned for benefit of creditors, see "Assignments for Benefit of Creditors," § 318.  
 To enforce mechanic's lien, see "Mechanics' Liens," § 310.  
 To enforce vendor's lien, see "Vendor and Purchaser," § 294.  
 To foreclose mortgage, see "Building and Loan Associations," § 39; "Chattel

"Mortgages," § 290; "Corporations," § 482; "Mortgages," §§ 377, 581.

To restrain collection of school warrants, see "Schools and School Districts," § 111.

To secure release of insane person from asylum, see "Insane Persons," § 51.

**§ 130. Right to compensation in general.**

**§ 131. Statutory regulations.**

**§ 132. Services under assignment by court.**

*Cross-Reference.*

Attorney's fees as costs in criminal cases, see "Costs," § 308.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 133. Employment of attorney.**

*Cross-References.*

Evidence, see post, § 166.

Liability of attorney for compensation of counsel employed by him, see ante, § 26.

Liability of client for compensation of counsel employed by attorney, see ante, § 78.

What constitutes retainer, see ante, § 64.

Liability of infant, see "Infants," § 49.

(a) Attorneys through whose labors a fund for the benefit of a corporation, consisting of a judgment, was obtained, and who conducted the action on a contingent fee by an agreement with the majority stockholders, to whom they supposed the claim belonged individually, are entitled to their fees as against the minority stockholders, who stood by, saw the work being done, and made no objection.—*Davis v. Gemmell*, 73 Md. 530, 21 Atl. 712; *Gemmell v. Poe*, Id; *Brydon v. Gemmell*, Id; *North Branch Co. v Same*, Id. [Cited and annotated in 15 L. R. A. (N. S.) 729, on contingent attorney's fee in representative suit.]

(b) Where an action was against two defendants as joint tort feorsors, and the only counsel who appeared for defendants was employed by one of them with the assent of the other, who received the benefit of the counsel's service, the defendant who employed and paid the counsel may compel contribution from his co-defendant for half the amount expended.—*Percy v. Clary*, 32 Md. 245.

(c) A counselor employed by an attorney in fact of a cestui que trust is not entitled

to counsel fees out of the trust fund.—*Laroque v. Candolle*, 4 Md. Ch. 347.

### § 134. Premature termination of relation.

#### *Cross-References.*

Effect of premature termination or settlement of action, see post, § 150.

Payment as prerequisite to substitution, see ante, § 75.

Performance of contract, see post, § 145.

### § 135. Performance of services.

### § 136. Persons entitled.

#### *Cross-References.*

Persons entitled to lien, see post, § 177.

Right of agent engaging attorney to contract to retain part of his fees, see "Principal and Agent," § 69.

Right of executor or administrator to compensation for services rendered the estate as attorney, see "Executors and Administrators," § 494.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 137. Retaining fee.

(a) The right of an attorney to an appearance fee depends upon a contract, either express or implied, with the party against whom it is charged.—*Neighbors v. Maulsby*, 41 Md. 478.

### § 138. Statutory fees and taxed costs.

#### *Cross-References.*

Statutory regulations as to compensation, see ante, § 131.

Value of services, see post, §§ 139-141.

In action to confirm parol partition, see "Partition," § 9.

In action to quiet title, see "Quieting Title," § 54.

(a) The counsel fee paid by a contestant of a will admitted to probate is evidence of the reasonableness of a similar fee allowed the executor to maintain it.—*Compton v. Barnes*, 4 Gill 55, 45 Am. Dec. 115. [*Cited and annotated in 26 L. R. A. (N. S.) 759*, on right of executor to allowance for attorney's fees in attempt to establish or defend will.]

### § 139. Value of services.

### § 140.—In general.

(a) Three judgments were placed in an attorney's hands, on which he ordered execution from term to term. He also obtained a judgment by confession for his client against the same defendant. After the attorney's death there was realized thereon,

through another attorney, by sale under execution and bill in equity, the net sum of \$2,096. *Held*, that \$300 was an unreasonable fee for the first attorney, and that his representatives should be allowed only one-half of 5 per cent.—the usual commission—of the money collected.—*Gordon v. Miller*, 14 Md. 204.

(b) An attorney having several judgments in his hands for collection ordered execution on them to lie from term to term, and died before making anything from them. They then came to the hands of another attorney, and by a sale of the property levied on part of the money was made. A bill in equity was then filed to sell the residue of the defendant's real estate for their payment, and the amount realized was still insufficient for the payment of the judgments in full. *Held*, that the most which should be allowed the representatives of the deceased attorney for his services was one-half of 5 per cent. on the net amount of the proceeds of the sale, both under the executions and decree.—*Gordon v. Miller*, 14 Md. 204.

(c) Where an attorney was employed to collect money by an administratrix who died after judgments were recovered on some of the claims and suit was instituted on others, and her successors refused to continue the employment of the attorney, he was entitled to one-half of 5 per cent.—the usual commission.—*In re Young*, 3 Md. Ch. 461.

(d) The counsel fee paid by a contestant of a will admitted to probate is evidence of the reasonableness of a similar fee allowed the executor to maintain it.—*Compton v. Barnes*, 4 Gill 55, 45 Am. Dec. 115. [*Cited and annotated in 26 L. R. A. (N. S.) 759*, on right of executor to allowance for attorney's fees in attempt to establish or defend will.]

(e) Counselors at law may recover for professional services rendered on a quantum meruit.—*Calvert v. Cox*, 1 Gill 95.

(f) Evidence may be offered of the usual and customary compensation; but what was paid to any particular individual, standing per se, is inadmissible. *Sed quære*.—*Calvert v. Cox*, 1 Gill 95.

### § 141.—Specific services and particular cases.

#### *Cross-Reference.*

Validity of settlement between attorney and client, see ante, § 124.

(a) Three judgments were placed in an attorney's hands, on which he ordered execution from term to term. He also obtained a judgment by confession for his client against the same defendant. After the attorney's death there was realized thereon, through another attorney, by sale under execution and bill in equity, the net sum of \$2,096. *Held*, that \$300 was an unreasonable fee for the first attorney, and that his representatives should be allowed only one-half of 5 per cent.—the usual commission—of the money collected.—*Gordon v. Miller*, 14 Md. 204.

### § 142. Contracts for compensation.

#### *Cross-References.*

See "Bills and Notes," §§ 110, 126, 160; "Bonds," § 62; "Chattel Mortgages," §§ 25, 115; "Mortgages," §§ 19, 125.

Settlements between attorney and client, see ante, § 124.

Taking security from client after commencement of relation, see ante, § 124.

Bond in replevin, see "Replevin," § 124.

Bond on appeal, see "Appeal and Error," § 1234.

Champertous contracts, see "Champerty and Maintenance," § 5.

Compromise as to amount, see "Compromise and Settlement," § 21.

Consideration for modification of contract with attorney, see "Contracts," § 237.

Contract by administrator as within statute of frauds, see "Frauds, Statute of," § 26.

Contract by guardian, see "Guardian and Ward," § 49.

Contract by minor, see "Infants," § 50.

Contract by indemnity, see "Indemnity," § 9.

Contracts for percentage of alimony as in derogation of marriage, see "Contracts," § 111.

Contract to pay attorney as equitable assignment, see "Assignments," § 52.

Contract to pay attorney's fees as original or collateral, see "Frauds, Statute of," § 23.

Dismissal, provision for fees, see "Dismissal and Nonsuit," § 16.

Effect of partial illegality of contract, see "Contracts," § 137.

Lease, see "Landlord and Tenant," § 238.

Oral modification of written contract, see "Contracts," § 238.

Right to attorney's fee under agreement between others, see "Contracts," §§ 187, 206.

Right to compensation under implied agreement to pay for services notwithstanding champertous agreement, see "Champerty and Maintenance," § 5.

Stipulations as to attorneys' fees as usury, see "Usury," § 62.

Validity of bond providing for payment of attorneys' fees, see "Bonds," § 43.

### § 143.—Making, requisites, and validity.

(a) Where an agreement as to compensation was made after the terms of a settlement of a suit begun by an attorney for his client were agreed on, it would require the most convincing proof of the utmost good faith on part of the attorney, and of full knowledge of the terms of the settlement and entire freedom of action on the part of his client, before a court of equity would sanction a retention by the attorney of a large part of the amount recovered.—*Etzel v. Duncan*, 112 Md. 346, 76 Atl. 493.

### § 144.—Construction and operation.

(a) An attorney agreed with his client to prosecute a case for a certain fee on a "final decision" in the client's favor. Shortly after a favorable judgment, a law was passed for the first time permitting appeals in such cases. *Held*, that the attorney could collect, besides such fee, for services rendered on appeal and on a second trial, under a promise for additional compensation.—*Calvert v. Cox*, 1 Gill 95.

### § 145.—Performance.

#### *Cross-Reference.*

Premature termination of relation in general, see ante, § 134.

### § 146. Contingent fees.

#### *Cross-References.*

Admissibility of evidence of contract for contingent fee, see "Evidence," § 410.

Agreement to compensate attorney employed by person suing or defending in forma pauperis, see "Costs," §§ 128, 133.

Assignment of interest in claim against United States, see "United States," § 111.

Burden to show notice to defendant of assignment of claim by plaintiff to his attorney, see "Assignments," § 134.

Champertous agreements, see "Champerty and Maintenance," § 5.

Effect of statute of frauds, see "Frauds, Statute of," § 142.



**Annotation.**

Validity of agreements as to contingent fees.—14 L. R. A. (N. S.) 1101, note; 38 L. R. A. (N. S.) 634, note; 27 L. R. A. (N. S.) 634, note.

**§ 147.—Requisites and validity of contract.****Cross-Reference.**

Performance of contract, see post, § 149.

(a) Evidence *held* insufficient to show fraud or undue influence practiced by an attorney in settling with his client for his services, or that the client did not agree before suit to pay one-half the amount recovered.—*Etzel v. Duncan*, 112 Md. 346, 76 Atl. 493.

(b) If, when a client employed an attorney, who was a stranger to him, he agreed in the presence of friends he had selected to assist him in his proposed litigation, to allow the attorney one-half of the amount recovered, equity will not relieve him of his contract.—*Etzel v. Duncan*, 112 Md. 346, 76 Atl. 493.

(c) Certain of the next of kin of C. employed W. to have her declared a lunatic, and, in case she died intestate, to receive any shares of her estate which they might become entitled to as heirs at law. By the terms of the agreement, W. was to retain, as his compensation, one-half of all he might so receive, after deducting "all expenses necessary for the recovery of such shares." C. was declared a lunatic, at the instance of another person than W., and, after her death, a will which she had executed was declared valid as to the personality. W. then employed D., an attorney at law, to bring an action of ejectment to recover the real estate, and agreed to give him, for his professional services, one-half of all that might be recovered. After a protracted litigation, D. negotiated a compromise between W. and the devisee under the will, by which a certain portion of the estate was set apart for the heirs at law. *Held*, that the compensation which W. had agreed to give D. was not, under the circumstances, excessive, and that the same might properly be deducted, as "necessary expenses," from the amount recovered, before distribution of the same under the

agreement between W. and the heirs at law.—*Cain v. Warford*, 33 Md. 23.

**§ 148.—Construction and operation of contract.****Cross-References.**

Effect of dismissal of action or settlement with adverse party by client, see post, § 150.

Effect as giving attorney right to intervene in chancery proceeding concerning claim, see "Equity," § 114.

Effect as creating lien, see post, § 176.

**Annotation.**

Right to discharge attorney employed for contingent fee.—38 L. R. A. (N. S.) 389, note.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 149.—Performance of contract.****Cross-References.**

Effect of premature termination or settlement of action, see post, § 150.

Requisites and validity of contract, see ante, § 147.

(a) Attorneys cannot recover a contingent fee agreed to be paid in the event of the successful conclusion of a suit, when it appears that their client effected a settlement by purchasing the interest of the adverse party in the subject-matter of the litigation, for it is impossible to ascertain whether the suit would have been concluded successfully.—*Semmes v. Western Union Tel. Co.*, 73 Md. 9, 20 Atl. 127.

(b) Where attorneys were conducting a suit on a contingent fee, and a settlement was made by their clients, compensation for services rendered up to the time of the settlement of the suit can be recovered under a general assumpsit, and defendant cannot set up the special contract to defeat such recovery.—*Semmes v. Western Union Tel. Co.*, 73 Md. 9, 20 Atl. 127.

(c) Certain of the next of kin of C. employed W. to have her declared a lunatic, and, in case she died intestate, to receive any shares of her estate which they might become entitled to as heirs at law. By the terms of the agreement, W. was to retain as his compensation, one-half of all he might so receive, after deducting "all expenses necessary for the recovery of such shares." C. was declared a lunatic at the instance of another person than W., and, after her

death, a will which she had executed was declared valid as to personalty. W. then employed D., an attorney at law, to bring an action of ejectment to recover the real estate, and agreed to give him for his professional services, one-half of all that might be recovered. After a protracted litigation, D. negotiated a compromise between W. and the devisees under the will, by which a certain portion of the estate was set apart for the heirs at law. *Held*, that the compensation which W. had agreed to give D. was not, under the circumstances, excessive, and that the same might properly be deducted, as "necessary expenses," from the amount recovered, before distribution of the same under the agreement between W. and the heirs at law.—*Cain v. Warford*, 33 Md. 23.

**§ 150.—Effect of premature termination or settlement of action.**

*Cross-References.*

Effect of premature termination of relation, see ante, § 134.

Performance of services in general, see ante, § 149.

Protection against settlement between parties, see post, §§ 189, 190.

(a) Where attorneys were conducting a suit on a contingent fee, and a settlement was made by their clients, compensation for services rendered up to the time of the settlement of the suit can be recovered under a general assumpsit, and defendant cannot set up the special contract to defeat such recovery.—*Semmes v. Western Union Tel. Co.*, 73 Md. 9, 20 Atl. 127.

(b) Attorneys cannot recover a contingent fee agreed to be paid in the event of the successful conclusion of a suit, when it appears that their client effected a settlement by purchasing the interest of the adverse party in the subject-matter of litigation, for it is impossible to ascertain whether the suit would have been concluded successfully.—*Semmes v. Western Union Tel. Co.*, 73 Md. 9, 20 Atl. 127.

**§ 151. Contracts for division between attorneys, and apportionment.**

**§ 152. Reimbursement of expenses.**

**§ 153. Deductions and forfeitures.**

**§ 154. Retainer from funds in hands of attorney.**

*Cross-References.*

Lien, see post, § 182.

Set-off in action by client for money collected, see ante, § 128.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 155. Allowance and payment from funds in court.**

*Cross-References.*

See "Interpleader," § 35.

In actions by or against infants, see "Infants," § 116.

Priorities, see "Corporations," §§ 566, 627.

(a) In a suit to set aside a deed of trust of certain securities given by a life tenant, it was held that the deed passed absolutely certain of the securities, which belonged to her, but that as to the others it passed only her life estate—the latter securities being a part of testator's estate—and the decree referred the cause for an accounting. *Held*, that the court had power, within the scope of the decree, to make a proper allowance to the attorney whose services were rendered in support of the deed.—*Bauernschmidt v. Bauernschmidt*, 101 Md. 148, 60 Atl. 437.

(b) The income of all the securities going to the life tenant, the better course was to allow the attorney's fee from the income of any of the securities.—*Bauernschmidt v. Bauernschmidt*, 101 Md. 148, 60 Atl. 437.

(c) Before the act repealing the charter of a relief association went into effect, 95 per cent. of the members assigned their interests to the railroad company, in trust for its new relief department, under an agreement that the interest of each nonassigning member should be fixed, and paid him in money. Before the association's affairs were, or could have been, wound up, two nonassignors filed bills to contest the transfer of certain moneys into a pension fund, and the payment of benefits for disabilities continuing after the association's dissolution, and for a receiver. The railroad then filed a bill against the association and the dissenting members, asking the court to execute the trusts under the agreement, and distribute the assets. The cases being con-

solidated, a receiver was refused, and the funds adjudged, 95 per cent. to the railroad and 5 per cent. to the dissenters. *Held*, that the latter's counsel, having served in antagonism to, and, had they succeeded, to the detriment of, the 95 per cent. interest in the fund, were entitled to fees, not out of the whole fund, but only out of the 5 per cent. recovered by their clients.—*Baltimore & O R. Co. v. Brown*, 79 Md. 442, 29 Atl. 524. [*Cited and annotated* in 54 L. R. A. 824, on fees out of fund for attorneys of creditors suing in behalf of themselves and others.]

(d) Where a devisee, against the will of the other devisees, employs counsel to set aside a deed of the testator made after the will, and they refuse any benefit accruing to them from the recovery, his counsel is not entitled to an allowance for fees out of the property thus recovered, but must look to his client.—*McGraw v. Canton*, 74 Md. 554, 22 Atl. 132; *Same v. McGraw*, *Id.*, distinguishing *Brydon v. Gemmell*, 73 Md. 530, 21 Atl. 712.

### § 156. Summary remedies to compel payment.

#### Cross-References.

Actions, see post, §§ 157-169.

Summary proceedings by client, see ante, § 126.

Right to trial by jury, see "Jury," § 13.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 157. Actions for compensation.

#### Cross-References.

Against husband for counsel fees and expenses of wife in divorce suit, see "Divorce," § 198.

Operation and effect of discontinuance, see "Dismissal and Nonsuit," § 42.

### § 158.— Nature and form.

(a) Agreements between solicitors and suitors relative to professional services must be enforced like other contracts, and cannot be introduced and settled in the cause in respect to which they were made.—*In re Strike*, 1 Bland 57.

### § 159.— Grounds of action.

### § 160.— Conditions precedent.

### § 161.— Defenses.

#### Cross-References.

See "Accord and Satisfaction," § 12.

Deductions and forfeitures, see ante, § 153.

Counterclaim, see "Set-Off and Counterclaim," § 24.

### § 162.— Time to sue, and limitations.

#### Cross-References.

Accrual of right of action, see "Limitation of Actions," §§ 46, 50, 67.

Burden of proof, see "Limitation of Actions," § 195.

General statutes applicable, see "Limitation of Actions," § 21.

Question for jury, see "Limitation of Actions," § 199.

### § 163.— Parties.

### § 164.— Process and appearance.

### § 165.— Pleading.

#### Cross-References.

In actions on notes providing for collection fees, see "Bills and Notes," § 471.

In justice's court, see "Justices of the Peace," § 91.

Right to bill of particulars, see "Pleading," § 314.

### § 166.— Evidence.

#### Cross-References.

See ante, § 139.

As to application of payment, see "Payment," § 68.

As to bar of right of action, see "Limitation of Actions," § 195.

Evidence of contract for contingent fee, see "Evidence," § 110.

Testimony as to transactions with persons since deceased, see "Witnesses," §§ 140, 176.

(a) Plaintiff, being employed by defendant and others to relieve them from subscriptions to the stock of a corporation, performed work in suits brought against other subscribers, though none was brought against defendant, and also took depositions over a large extent of country, and did other legal work, and prepared to resist all demands against defendant, and after several years procured a release. *Held*, that the evidence of performance was sufficient to entitle plaintiff to a recovery on the contract of employment.—*Wheeler v. Harrison*, 94 Md. 147, 50 Atl. 523.

(b) On a quantum meruit for legal services rendered, evidence is not admissible, standing per se, as to what was paid to another attorney who rendered like services in the same case.—*Calvert v. Cox*, 1 Gill 95.

**§ 167.— Trial.***Cross-References.*

Bar of action, as question for jury, see "Limitation of Actions," § 199.  
 Reference in actions involving account, see "Reference," § 8.  
 Specification in verdict of amount of recovery, see "Trial," § 383.

**§ 168.— Judgment and enforcement thereof.***Cross-References.*

Excuses for default, see "Judgment," § 148.  
 Fraud as ground for equitable relief, see "Judgment," § 443.  
 Interest on judgment for attorney's fees, see "Interest," § 22.  
 Want of or defect in process, service, or notice as ground for equitable relief, see "Judgment," § 419.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 169.— Appeal or error.***Cross-References.*

Presumptions, see "Appeal and Error," § 936.  
 Right of counsel to review on question of allowance of counsel fees in action in which he appears as counsel, see "Appeal and Error," § 152.

(a) Where attorneys rendered valuable services in proceedings for the sale of an insolvent corporation's assets, and their claim for \$5,000 was supported as to its reasonableness by the affidavit of two reputable attorneys, a finding by the trial judge that it was reasonable will not be set aside on appeal.—*Terminal Freezing & Heating Co. v. Whitlock*, 120 Md. 408, 87 Atl. 820.

§ 170. (Omitted from the classification used herein.)

**(B) LIEN.***Cross-References.*

Allowance from fund in court, see ante, § 155.  
 Duty to account notwithstanding lien on funds, see ante, § 118.  
 Agreement to charge life estate with payment of attorney's fees as within statute of frauds, see "Frauds, Statute of," § 56.  
 Agreement to pay attorneys as equitable lien, see "Assignments," § 52.  
 Claim against estate of deceased client, see "Executors and Administrators," § 264.  
 Equitable lien on failure of conveyance, see "Liens," § 7.  
 In action for damages caused by combinations, see "Monopolies," § 28.  
 In bankruptcy proceedings, see "Bankruptcy," § 357.

Laws impairing obligation of contract, see "Constitutional Law," § 161.

Lien for costs as interest affecting competency as witness in action against executor, see "Witnesses," § 140.

Of attorneys employed to act for state, see "States," § 64.

Of city attorney, see "Municipal Corporations," § 162.

Power of courts to determine wisdom of law giving lien, see "Constitutional Law," § 70.

Review of orders for enforcement as final orders in special proceedings, see "Appeal and Error," § 84.

**§ 171. Nature of attorney's lien.****§ 172. Statutory provisions.****§§ 173-177. Right to lien.***Cross-Reference.*

Effect of substitution of other attorney, see ante, § 75.

Securing allowance of preferred claim against bankrupt's estate, see "Bankruptcy," § 357.

**§§ 178, 179, 180. Proceedings to perfect.****§ 181. Services or fees covered.****§ 182. Subject-matter to which lien attaches.***Cross-References.*

Retainer of compensation from funds in hands of attorney, see ante, § 154.

Enforcement against exempt property, see "Exemptions," § 66.

**§ 183. Time when lien attaches.****§ 184. Priorities.***Cross-References.*

Necessity of filing claim, see ante, § 179.

Protection against assignment by client, see post, § 187.

Protection against set-off, see post, § 191.  
 As against mortgage, see "Mortgages," § 151.

**§ 185. Assignment of lien or claim.****§ 186. Waiver, loss, or discharge.***Cross-Reference.*

Protection on substitution of other attorney, see ante, § 75.

*Annotation.*

Effect of attorney's taking assignment of judgment as to lien for compensation.—37 L. R. A. (N. S.) 228, note.

**§ 187. Protection against assignment by client.***Cross-References.*

Necessity of filing, see ante, § 179.

Protection against settlement between parties, see post, §§ 188-191.

*Annotation.*

Assignment of judgment to attorney defeating lien.—23 L. R. A. 889, note.

Assignment of judgment as affecting attorney's lien thereon.—37 L. R. A. (N. S.) 226, note.

### § 188. Protection against settlement between parties.

#### Cross-References.

Protection against assignment by client, see ante, § 187.  
 Statutory provisions, see ante, § 172.  
 Application to vacate judgment entered without knowledge of attorney, see "Judgment," §§ 388, 390.  
 Claim against decedent's estate, see "Executors and Administrators," § 281.  
 Release of one of joint tort-feasors operating as bar to further prosecution of suit against the other for benefit of attorney's lien, see "Release," § 29.  
 Validity of release as between parties, see "Release," § 4.  
 Validity of settlement as between parties, see "Compromise and Settlement," § 8.

### § 189.—In general.

### § 190.—Remedies of attorney.

#### Cross-References.

Contest of will, see "Wills," § 229.  
 Effect of appeal in will contest, see "Wills," § 368.  
 Continuing suit to determine amount of contingent fee, see ante, § 150.  
 Judgment to secure lien as breach of contract of compromise, see "Compromise and Settlement," § 20.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 191. Protection against set-off between parties.

#### Cross-Reference.

Right of attorney to appeal from order of set-off in name of judgment creditor, see "Appeal and Error," § 322.  
 (a) An attorney's lien is subject to any existing right of set-off in the other party to the suit.—*Marshall v. Cooper*, 43 Md. 46; *Levy v. Steinbach*, Id. 212.  
 (b) An insolvent obtained a judgment in

an action of tort, part of which was entered for the use of his attorneys for their fees in the action. At the same time, defendants were prosecuting actions against said insolvent, which finally resulted in a judgment in excess of the former judgment. *Held*, that defendant's right to an equitable set-off was superior to the attorney's rights as assignees, and also that the attorneys were not entitled to a lien on the judgment for their services which they could assert as against the equitable set-off.—*Marshall v. Cooper*, 43 Md. 46.

### § 192. Enforcement.

#### Cross-References.

Appeal by attorney in name of client, see "Appeal and Error," § 322.  
 Decision on trial by court without jury, see "Trial," § 387.  
 Effect of compromise agreement between attorney and client as to amount of fees, see "Compromise and Settlement," § 21.  
 Joinder of causes of action, see "Action," § 50.  
 Jurisdiction dependent on amount or value in controversy, see "Courts," § 120.  
 Jurisdiction of municipal court, see "Courts," § 188.  
 Limitations, see "Limitation of Actions," §§ 34, 143.  
 Marshaling assets, see "Marshaling Assets and Securities," § 7.  
 Operation and effect of discontinuance of action, see "Dismissal and Nonsuit," § 42.  
 Right to jury trial, see "Jury," §§ 13, 14.  
 Set-off against estate of insolvent, see "Assignments for Benefit of Creditors," § 334.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## ATTORNEY GENERAL.

### Scope-Note.

[INCLUDES the chief law officer in the government of the United States and of each state; his appointment, qualification, and tenure of office; and rights, powers, duties, and liabilities of the attorney general, his assistants, deputies, etc., in general.

[EXCLUDES particular proceedings by or in the name of the attorney general (see "Corporations"; "Quo Warranto"; "Escheat"; and other specific heads). For complete list of matters excluded, see cross-references, post.]

### Analysis.

- § 1. Appointment, qualification, and tenure.
- § 2. Deputies, assistants, and substitutes.
- § 3. Compensation.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

- § 4. Representation of state in general.
- § 5. Powers and duties.
- § 6. — In general.
- § 7. — Bringing and prosecution of actions.
- § 8. Liabilities.
- § 9. Actions and other proceedings.

### *Cross-References.*

Authority to enter nol. pros., see "Criminal Law," § 302.  
 Authority to waive state's immunity from suit, see "States," § 191.  
 Consent to quo warranto proceedings, see "Quo Warranto," § 44.  
 Estoppel to attack certificate of expenditures, see "Estoppel," § 80.  
 Escheat proceedings, see "Escheat," § 6.  
 Mandamus proceedings, see "Mandamus," § 147.  
 Proceedings before grand jury, see "Grand Jury," § 34.

Proceedings to forfeit charter as proceeding against state, see "States," § 192.  
 Proceedings to revoke license of physician, see "Physicians and Surgeons," § 11.  
 Prohibition of acts of attorney general, see "Prohibition," § 6.  
 Quo warranto proceedings, see "Quo Warranto," § 33.  
 Signing indictments, see "Indictment and Information," § 33.  
 Suit on behalf of state in respect to bridge acquired by public authorities, see "Bridges," § 26.

### NOTE.

Only one Maryland case touching this subject is to be found in the Maryland Reports. Nevertheless, the titles and sub-titles are given as they appear in the American Digest Key Number classification, so that the investigator may at one time accomplish the double purpose of learning whether a given point has been passed upon by the Maryland Courts and also ascertain the particular place in the American Digest System where all state and federal cases upon the point will be found collected.

### § 1. Appointment, qualification, and tenure.

### § 2. Deputies, assistants, and substitutes.

### § 3. Compensation.

(a) An attachment for a contempt, against a juror for nonattendance, is not an action for which the attorney general can receive a fee for appearing on behalf of the state.—*Martin v. State*, 1 H. & J. 721.

### § 4. Representation of state in general.

### §§ 5, 6, 7. Powers and duties.

#### *Cross-References.*

Power to waive state's immunity from suit, see "States," § 191.

Proceedings to try title to office, see "Officers," § 88.

#### *Annotation.*

Power to institute quo warranto and proceedings in nature thereof.—1 L. R. A. (N. S.) 826; 15 L. R. A. (N. S.) 603, notes.

Right of attorney general to maintain suit to remove officers of private corporations.—18 L. R. A. (N. S.) 672.

Right of attorney general to enforce or prevent violation of statutory regulations affecting rates.—18 L. R. A. (N. S.) 664.

### § 8. Liabilities.

### § 9. Actions and other proceedings.

#### *Cross-Reference.*

As proper party in suit in which state is interested, see "States," § 208.

### ATTORNEY'S FEES.

#### *Cross-Reference.*

See "Attorney and Client."

#### *Annotation.*

1 Words and Phrases, 635.

### ATTORNEYS IN FACT.

#### *Cross-References.*

See "Principal and Agent."

To sign and file remonstrance against grant of license, see "Intoxicating Liquors," § 68.

#### *Annotation.*

1 Words and Phrases, 635.

### ATTORNMEN.T.

#### *Cross-Reference.*

By tenant, see "Landlord and Tenant," §§ 15, 68.

#### *Annotation.*

1 Words and Phrases, 636, 637.

# AUCTIONS AND AUCTIONEERS.

## *Scope-Note.*

[INCLUDES the regulation and conduct of sales by auction, and rights, duties, and liabilities of auctioneers and of sellers and buyers at auctions in general.

[EXCLUDES requirements of statute of frauds as to sales (see "*Frauds, Statute of*"). For complete list of matters excluded, see cross-references, post.]

## *Analysis.*

- § 1. Power to regulate.
- § 2. Statutory regulations.
- § 3. Persons subject to regulation.
- § 4. Licenses and taxes.
- § 5. Bonds.
- § 6. Agency of auctioneer.
- § 7. Conduct and validity of sale.
- § 8. Rights and liabilities of seller and buyer.
- § 9. Liabilities of auctioneer.
- § 10. Compensation and lien of auctioneer.
- § 11. Actions by or against auctioneer.
- § 12. Penalties for violations of regulations.
- § 13. Offenses by auctioneers.

## *Cross-References.*

- |   |   |
|---|---|
| <p>Auction sale pending suit, effect on title, see "Lis Pendens," §§ 23-25.</p> <p>Awarding contracts to bidders, by cities or villages, see "Municipal Corporations," §§ 234-242, 330-337; by counties, see "Counties," §§ 115-120; by school districts, see "Schools and School Districts," § 80; by states, see "States," § 98; by townships, see "Towns," § 38; by United States, see "United States," § 64; for carrying mails, see "Post Office," § 21; for construction of drains, see "Drains," § 49; for construction of fences, see "Fences," § 4; for maintenance and repair of highways, see "Highways," § 113.</p> <p>Constitutionality and validity of acts and ordinances imposing license taxes, see "Licenses," § 7.</p> <p>Contracts for making or procuring fictitious bids, see "Contracts," § 120.</p> <p>Contracts preventing competition in bids or proposals in general, see "Contracts," § 119.</p> <p>Contracts preventing competition in bids or proposals for public work, see "Contracts," § 132.</p> <p>Employment by municipalities, see "Municipal Corporations," § 214.</p> <p>Presumption as to value of property sold at public auction, see "Evidence," § 84.</p> <p>Retention of possession by seller as element of fraud as to creditors, see "Fraudulent Conveyances," § 140.</p> <p>Sale as evidence of value or market price of property, see "Evidence," § 113.</p> | <p>Sale by assignee for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 238-251; "Insolvency," § 82.</p> <p>Sale by guardian, see "Guardian and Ward," §§ 40-43, 75-115.</p> <p>Sale by receiver, see "Receivers," § 136.</p> <p>Sale by trustee, see "Trusts," §§ 188-204.</p> <p>Sale by trustee in bankruptcy, see "Bankruptcy," §§ 257-270.</p> <p>Sale in admiralty, see "Admiralty," § 99.</p> <p>Sale in partition proceedings, see "Partition," §§ 99-112.</p> <p>Sale in proceedings to enforce liens, see "Liens," §§ 19-22; "Maritime Liens," § 68; "Mechanics' Liens," §§ 293-300; "Pawnbrokers," § 8; "Warehousemen," § 33.</p> <p>Sale of county bonds, see "Counties," § 182.</p> <p>Sale of ferry franchise, or license, see "Ferries," § 15.</p> <p>Sale of impounded animals, see "Animals," § 106.</p> <p>Sale of Indian lands, see "Indians."</p> <p>Sale of land for purpose of assignment of dower, see "Dower," §§ 100-103.</p> <p>Sale of land of infant, see "Infants," § 40.</p> <p>Sale of municipal bonds, see "Municipal Corporations," § 921.</p> <p>Sale of property for nonpayment of assessments or taxes, see "Drains," §§ 87-90; "Levees," § 28; "Municipal Corporations," §§ 539-585; "Schools and School Districts," § 106; "Taxation," §§ 614-694; "Towns," § 59; "Waters and Water Courses," § 231.</p> |
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Sale of property of decedent, see "Executors and Administrators," §§ 366, 368, 370-373.

Sale of property of insane person, see "Insane Persons," § 71.

Sale of property of insolvent, see "Insolvency," § 82.

Sale of property subject to homestead, see "Homestead," § 203.

Sale of school district bonds, see "Schools and School Districts," § 97.

Sale of school lands, see "Public Lands," § 54.

Sale on attachment, see "Attachment," §§ 194-202.

Sale on execution, see "Execution," §§ 233, 234, 236-239.

Sale on mortgage foreclosure, see "Building and Loan Associations," § 39; "Chattel Mortgages," §§ 257-267, 285; "Corporations," §§ 481, 482; "Mortgages," §§ 329-379, 500½-554; "Railroads," § 192.

Sale under order of court in general, see "Judicial Sales."

Statute of frauds, application to auction sales of land or interests therein, see "Frauds, Statute of," § 77; sufficiency of memorandum of sale to satisfy, see "Frauds, Statute of," §§ 106, 107.

## § 1. Power to regulate.

## § 2. Statutory regulations.

## § 3. Persons subject to regulation.

### Cross-Reference.

Persons required to pay license, see post, § 4.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 4. Licenses and taxes.

### Cross-Reference.

Constitutionality and validity of acts and ordinances imposing license taxes, see "Licenses," § 7.

### Annotation.

Discrimination against nonresidents by statute or ordinance imposing license tax on auctioneer.—40 L. R. A. (N. S.) 290, note.

Delegation of municipal power as to license of.—20 L. R. A. 724, note.

(a) Under Code Pub. Local Laws, art. 4, §§ 74-76 (repealed by the act of 1900, ch. 208), imposing a duty or tax on real estate sold at auction in the city of Baltimore, each time any such real estate shall be "struck off," the duty is not collectible on a sale of land under a decree of foreclosure, where the purchase money is not paid, and a resale becomes necessary; there being, by fair construction, but a single sale.—State v. Second Nat. Bank, 84 Md. 325, 35 Atl. 889.

## § 5. Bonds.

(a) Y. executed to the mayor, etc., a bond as auctioneer, with M. his surety, under an ordinance requiring such bond to be executed before the obtaining of a license as auctioneer. The license was granted to Y. before the bond was given. After the license and bond were so obtained and given, W. sent certain goods to Y. to be sold at auction, who sold the same, but did not pay

over the proceeds to W. There was no provision in the ordinance authorizing such bonds to be sued on for the use of individuals; but the mayor gave general directions to the register to deliver copies of the auctioneer's bond to any person having claims against him as such; and a copy of the bond was, in pursuance of that order, delivered to W., who brought suit thereon in the names of the mayor, etc., for his own use, against M., the surety. *Held*, that he was entitled to recover.—McMehen v. Baltimore, 3 H. & J. 534.

(b) If goods are sent to an auctioneer, with directions to sell at auction, and he sells them at private sale without authority, and does not pay over the proceeds, it is a breach of the condition of his bond.—McMehen v. City of Baltimore, 3 H. & J. 534.

(c) In an action on an auctioneer's bond it will be presumed, in the absence of proof, that the bond and license were given on the same day, the execution of the former preceding the granting of the latter; the burden of proving otherwise being on the party so alleging.—McMehen v. City of Baltimore, 2 H. & J. 41.

## § 6. Agency of auctioneer.

## § 7. Conduct and validity of sale.

### Cross-Reference.

Memorandum by auctioneer as sufficient to satisfy statute of frauds, see "Frauds, Statute of," §§ 106, 107.

### Annotation.

Right to withdraw property from an auction sale after it has been offered.—57 L. R. A. 784; 20 L. R. A. (N. S.) 1188, notes.

Effect of preventing or checking bids upon the validity of sales at auction.—20 L. R. A. 545, note.

(a) An agreement between two persons to bid at an auction sale, the sole object of the



agreement being to enable the parties to obtain the property, which neither alone could do, and to share in the profits, is legal.—*Smith v. Ullman*, 58 Md. 183, 42 Am. Rep. 329. [*Cited and annotated* in 20 L. R. A. 552, on effect of preventing or checking bids on validity of auction sales; in 38 L. R. A. (N. S.) 732, on validity of agreement to purchase property at judicial sale for joint benefit.]

(b) Since the clerk of an auctioneer may become agent of the purchaser, to write down his name so as to bind him if it is done with his assent, this assent may be inferred where the clerk acts openly, and his action is acquiesced in by all persons present.—*Ijams v. Hoffman*, 1 Md. 423.

(c) Where the sale is to be without reservation, the employment of one to bid merely to enhance the price is such a fraud on the genuine bidder as will prevent enforcement of the sale.—*Moncrief v. Goldsborough*, 4 H. & McH. 281, 1 Am. Dec. 407.

### § 8. Rights and liabilities of seller and buyer.

#### *Cross-Reference.*

Retention of possession by seller as element of fraud as to creditors, see "Fraudulent Conveyances," § 140.

#### *Annotation.*

Relief from purchase at auction on ground of mistake.—34 L. R. A. (N. S.) 927, note.

(a) If, by the terms of the sale, a field of corn was to be considered as containing 40 acres, whether more or less, the purchaser is not entitled to any abatement in the price for any deficiency.—*Ijams v. Hoffman*, 1 Md. 423.

(b) Where a field of corn is offered for sale as containing a certain number of acres, and purchased as such, the purchaser does not, by taking possession in ignorance that it contains less, waive his right to an abatement of the price.—*Ijams v. Hoffman*, 1 Md. 423.

(c) Where a field of corn is advertised to be sold at auction as containing 40 acres, and, in an action to recover the purchase price therefor, the advertisement is the only evidence of the conditions of the sale, the purchaser may prove by a survey of the lot that it contained a less number, so as to en-

title him to a corresponding abatement of the price.—*Ijams v. Hoffman*, 1 Md. 423.

### § 9. Liabilities of auctioneer.

(a) An auctioneer who receives, and advances money on, goods fraudulently purchased by his consignor, having such notice of the fraud as would put a prudent man on inquiry, acquires no title to the goods as against the consignor's vendor.—*Higgins v. Lodge*, 68 Md. 229, 11 Atl. 846.

(b) Where a sale of personal property is made by an auctioneer without disclosing the name of the owner, and the property is afterwards claimed by a superior title, the purchaser may, in an action for money had and received, recover the purchase money of the auctioneer.—*Seemuller v. Fuchs*, 64 Md. 217, 1 Atl. 120, 54 Am. Rep. 766. [*Cited and annotated* in 35 L. R. A. (N. S.) 483, on liability of auctioneer or clerk for return of money.]

### § 10. Compensation and lien of auctioneer.

#### *Cross-Reference.*

Compensation of auctioneer making sales on foreclosure of mortgage, see "Mortgages," § 582.

### § 11. Actions by or against auctioneers.

#### *Cross-Reference.*

Actions on bonds, see ante, § 5.

(a) One from whom the seller obtains goods fraudulently may maintain replevin therefor against the auctioneer to whom they were sent for sale.—*Higgins v. Lodge*, 68 Md. 229, 11 Atl. 846.

### § 12. Penalties for violations of regulations.

### § 13. Offenses by auctioneers.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## AUDIT.

#### *Cross-References.*

Of claims against county, see "Counties," § 204.

Of claims against municipal corporation, see "Municipal Corporations," § 1012.

Of claims against school districts, see "Schools and School Districts," § 112.

Of claims against state, see "States," § 181.

Of claims against town, see "Towns," § 62.

Of claims against United States, see "United States," § 113.

#### *Annotation.*

1 Words and Phrases, 639-642.

## AUDITA QUERELA.

*Scope-Note.*

[INCLUDES relief of judgment debtors against judgments and executions on grounds of defense or discharge subsequently arising, by independent proceedings therefor; nature and scope of the remedy in general; in what cases and as to what judgments and executions it is allowed; grounds for, jurisdiction to grant, and proceedings to obtain writs of audita querela; requisites, issuance, and effect of such writs; proceedings thereon; hearing and determination thereof, and effect of decisions thereon; review of the proceedings; and costs on proceedings by audita querela.

[EXCLUDES relief against judgments and executions by motions and other proceedings in the same action (see "*Judgment*"; "*Execution*") ; relief on equitable grounds (see "*Judgment*") ; supersedeas (see "*Supersedeas*") ; and stay of execution (see "*Execution*"). For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Nature and scope of remedy.
- § 2. Judgments subject to review.
- § 3. Grounds for review.
- § 4. Proceedings to procure review, and effect thereof.
- § 5. Writ and service.
- § 6. Pleading.
- § 7. Evidence.
- § 9. Judgment.
- § 10. Appeal or error.
- § 11. Costs.
- § 12. Liabilities on bonds and recognizances.

*Cross-References.*

Bill of review in equity, see "*Equity*," §§ 442-466.  
 Relief against execution in general, see "*Execution*," §§ 158-177.  
 Relief against judgment by equitable proceedings, see "*Judgment*," §§ 403-469.  
 Relief against judgment by motion or other

proceeding in same action, see "*Judgment*," §§ 336-402.  
 Relief against justice's judgment against garnishee or trustee, see "*Justices of the Peace*," § 87.  
 Suspension of proceedings by supersedeas, see "*Supersedeas*."

**§ 1. Nature and scope of remedy.**

(a) The practice of granting summary relief on petition or motion has practically superseded the remedy by audita querela.—*Job v. Walker*, 8 Md. 129; *Huston v. Ditto*, 20 Md. 305.

(b) Where a matter of discharge has happened since the judgment, and defendant is in danger of, or actually under, execution, he may have relief in a summary way, on motion for a rule to show cause; the old practice, by an audita querela, in such cases, has fallen into disuse.—*Job. v. Walker*, 8 Md. 129.

(c) Where ca. sa. is issued after death of

a party, but tested before his death, a writ of audita querela issued, and, on demurrer thereto, the demurrer was adjudged good.—*Docura v. Henry*, 4 H. & McH. 480. [Cited and annotated in 61 L. R. A. 377, on effect of death after judgment on remedy by execution.]

**§ 2. Judgments subject to review.****§ 3. Grounds for review.***Cross-Reference.*

Nature and scope of remedy, see ante, § 1.

**§ 4. Proceedings to procure review, and effect thereof.**

(a) The affidavit, on a rule to show cause, in a proceeding of the nature of an audita

querela, may be made by another person as well as by defendant.—*Job v. Walker*, 3 Md. 129.

§ 5. Writ and service.

§ 6. Pleading.

§ 7. Evidence.

§ 8. (Omitted from the classification used herein.)

§ 9. Judgment.

§ 10. Appeal or error.

§ 11. Costs.

§ 12. Liabilities on bonds and recognizances.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### AUDITORIUM.

#### Cross-References.

Power of city to construct, see "Municipal Corporations," § 268.

Regulation of municipal auditorium, see "Municipal Corporations," § 717.

### AUDITORS.

#### Cross-References.

See "Reference."

Appointment in actions pending on appeal from justice's court, see "Justices of the Peace," § 176.

Appointment on writ of entry, see "Entry, Writ of," § 22.

Board of town auditors, see "Towns," § 62.

Conclusiveness of order directing audit of claims, see "Motions," § 64.

County auditors, see "Counties," §§ 84, 91.

Distribution of decedent's estate, see "Executors and Administrators," § 314.

In actions of book account or book debt, see "Account, Action On," § 24.

In attachment proceedings, see "Attachment," § 214.

In chancery, see "Equity," §§ 393-414.

In suit for accounting, see "Account," § 20.

Right to jury trial on issues raised before auditor, see "Jury," § 12.

State Auditor and Treasurer as successors of levee commissioners, see "Levees," § 11.

#### Annotation.

1 Words and Phrases, 643, 644.

### AUTHENTIC ACT.

#### Cross-References.

See "Deeds"; also "Chattel Mortgages"; "Mortgages."

### AUTHENTICATION.

#### Cross-References.

Of affidavit, see "Affidavits," §§ 12, 15.

Of assessment of highway taxes, see "Highways," § 127.

Of assessment rolls, see "Taxation," § 431.

Of certificate of acknowledgment, see "Acknowledgment," § 39.

Of court records in general, see "Courts," § 118.

Of deposition, see "Depositions," § 76.

Of documents offered in evidence, see "Criminal Law," § 444; "Evidence," §§ 370-381.

Of legislative bills, see "Statutes," § 37.

Of notes and transcript of testimony taken at preliminary examination or at former trial, see "Criminal Law," § 547.

Of oath to proof of claim against bankrupt's estate, see "Bankruptcy," § 330.

Of record for purpose of review, see "Appeal and Error," §§ 612-618; "Criminal Law," § 1105.

Of written instrument by certificate of acknowledgment, see "Acknowledgment," § 52.

#### Annotation.

1 Words and Phrases, 645.

### AUTHORITIES.

#### Cross-References.

Citation in brief of counsel, see "Appeal and Error," § 761.

Previous decisions of courts as precedents, see "Courts," §§ 88-100.

### AUTHORITY.

#### Cross-References.

See "Powers."

Of agent or employee of carrier, see "Carriers," § 47.

Of agents, see "Principal and Agent," §§ 47-80, 91-137.

Of arbitrators, see "Arbitration and Award," §§ 29, 30.

Of assignee or trustee for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 220, 224-230, 232-236, 240, 253-257.

Of assignees or trustees in insolvency, see "Insolvency," §§ 78-80, 82, 83.

Of attorney, see "Attorney and Client," §§ 62-104.

Of broker, see "Brokers," §§ 6-18.

Of court as to continuance in criminal prosecutions, see "Criminal Law," § 578.

Of court or other tribunal to render personal judgment, see "Judgment," §§ 7-11.

Of court to amend or correct judgment, see "Judgment," §§ 297-299.

Of court to open or vacate judgment, see "Judgment," §§ 137, 340-342.

Of court to vacate sale on foreclosure of mortgage, see "Mortgages," § 529.

Of detectives, see "Detectives," § 4.

Of executors or administrators, see "Executors and Administrators," §§ 74-172, 394.

Of factors, see "Factors," §§ 5, 6, 9, 11-15, 18, 19, 21-29.

Of guardians, see "Guardian and Ward," §§ 28-74.

Of guardians or committees of insane persons, see "Insane Persons," § 40.  
 Of health officers and boards, see "Health," §§ 6, 7.  
 Of highway officers, see "Highways," § 95.  
 Of interstate commerce commission, see "Commerce," § 85.  
 Of justices of the peace, see "Justices of the Peace," §§ 81-62.  
 Of land officers, see "Public Lands," § 96.  
 Of levee boards, see "Levees," § 9.  
 Of municipal council or other board for officer to make assessment for public improvements, see "Municipal Corporation," § 451.  
 Of municipal officers or agents to issue municipal bonds, see "Municipal Corporations," § 920.  
 Of municipal officers to make public improvements as affecting liability to assessment for benefits, see "Municipal Corporations," § 410.  
 Of municipal officers to make public improvements as affecting right of property owners to damages, see "Municipal Corporations," § 379.  
 Of officers and agents of corporations in general, see "Corporations," §§ 397-433.  
 Of officers in general, see "Officers," §§ 103-105.  
 Of officers of army or navy, see "Army and Navy," § 15.  
 Of officer to take acknowledgment, see "Acknowledgment," §§ 15-21.  
 Of officer to take affidavit, see "Affidavit," §§ 5, 14.  
 Of policemen, see "Municipal Corporations," § 188.  
 Of poor-law officers and boards, see "Paupers," § 7.  
 Of receivers, see "Receivers," §§ 81-109, 132.  
 Of sheriffs and constables, see "Sheriffs and Constables," §§ 77-79, 84-86.  
 Of special or substitute judges, see "Judges," §§ 19, 25.  
 Of state officers, see "States," §§ 66-70.  
 Of trustee in bankruptcy, see "Bankruptcy," §§ 246-248, 250-255, 257-270, 272, 278.  
 Of trustees, see "Trusts," §§ 171-269.  
 Of umpire, see "Arbitration and Award," § 39.  
 To accept dedication, see "Dedication," § 33.  
 To administer oath, see "Oath," § 2.  
 To admit to bail, see "Bail," §§ 46-48.  
 To admit to practice of medicine and surgery, see "Physicians and Surgeons," § 3.  
 To allow appeal or writ of error, see "Appeal and Error," § 359.  
 To allow claims against municipal corporation, see "Municipal Corporations," § 1009.  
 To allow claims against state, see "States," § 178.  
 To allow or settle bill of exceptions, see "Exceptions, Bill of," § 32.  
 To allow supersedeas or stay on appeal or writ of error, see "Appeal and Error," § 477.  
 To alter instrument, see "Alteration of Instruments," § 12.

To amend or correct record on appeal or writ of error, see "Appeal and Error," §§ 648, 653.  
 To appoint referee, see "Reference," § 35.  
 To appoint to office, see "Officers," § 6.  
 To award costs, see "Costs," §§ 6-9.  
 To contract for construction or repair of highway, see "Highways," § 113.  
 To contract for public improvements, see "Municipal Corporations," § 328.  
 To dedicate property to public use, see "Dedication," § 13.  
 To demand or deliver persons accused, see "Extradition," §§ 4, 25, 26.  
 To dismiss appeal or writ of error, see "Appeal and Error," § 778.  
 To do banking business, see "Banks and Banking," §§ 6, 8-11.  
 To do insurance business, see "Insurance," §§ 5, 20.  
 To enter appearance for another, see "Appearance," § 3.  
 To enter into stipulations, see "Stipulations," § 4.  
 To enter judgment, see "Judgment," § 271.  
 To file information or complaint, see "Indictment and Information," § 39.  
 To give notice of appeal, see "Appeal and Error," § 412.  
 To grant arrest in civil action, see "Arrest," § 19.  
 To grant attachment, see "Attachment," § 70.  
 To grant injunction, see "Injunction," § 139.  
 To grant rehearing in appellate court, see "Appeal and Error," § 831.  
 To grant sequestration, see "Sequestration," § 11.  
 To indorse note, see "Bills and Notes," § 182.  
 To issue certificate of corporate stock, see "Corporations," § 97.  
 To issue process in general, see "Process," § 18.  
 To issue school district bonds, see "Schools and School Districts," § 97.  
 To issue writ of execution, see "Execution," §§ 60, 431.  
 To issue writ of habeas corpus, see "Habeas Corpus," § 47.  
 To issue writ of scire facias, see "Scire Facias," § 5.  
 To levy execution, see "Execution," § 123.  
 To make affidavit for arrest in civil action, see "Arrest," § 23.  
 To make affidavit for attachment, see "Attachment," §§ 87, 88.  
 To make arrest under warrant, see "Arrest," § 65.  
 To make arrest without warrant, see "Arrest," § 61.  
 To make deed to purchaser at execution sale, see "Execution," § 305.  
 To make deed to purchaser at tax sale, see "Taxation," § 746.  
 To pardon, see "Pardon," § 4.  
 To perform marriage ceremony, see "Marriage," § 27.  
 To provide school buildings, see "Schools and School Districts," § 67.  
 To punish violation of injunction, see "Injunction," § 229.

To receive subscription to corporate stock, see "Corporations," § 73.  
 To release mortgage, see "Mortgages," § 309.  
 To remove from office, see "Officers," § 7.  
 To require or take security to keep the peace, see "Breach of the Peace," § 19.  
 To select and summon jurors, see "Grand Jury," § 7.  
 To sell at foreclosure sale, see "Mortgages," § 507.  
 To sell at judicial sale in general, see "Judicial Sales," § 7.  
 To sell on execution, see "Execution," §§ 216, 217.  
 To serve process in justice's courts, see "Justices of the Peace," § 81.  
 To take affidavit for attachment, see "Attachment," § 90.  
 To tax costs, see "Costs," § 197.  
 To transfer bill or note without indorsement, see "Bills and Notes," § 206.  
 To vacate, dissolve, or modify injunction, see "Injunction," § 164.  
 To waive exemption, see "Exemptions," § 91; "Homestead," § 169.  
 Want of, as element of offense of forgery, see "Forgery," § 6.

*Annotation.*

1 Words and Phrases, 646-648.

## AUTHORS.

*Cross-References.*

See "Copyrights."  
 Libelous imputations concerning authors, see "Libel and Slander," § 9.  
 Right in respect to literary work in general, see "Literary Property."

*Annotation.*

1 Words and Phrases, 645, 646.

## AUTOMATIC COUPLERS.

*Cross-References.*

See "Carriers," § 290; "Commerce," § 27; "Master and Servant," § 111; "Railroads," § 229.

## AUTOMATIC DRAWBAR.

*Cross-Reference.*

See "Master and Servant," § 111.

## AUTOMATIC SPRINKLER.

*Cross-Reference.*

Breach of condition as to maintenance of, see "Insurance," § 884.

## AUTOMOBILES.

*Cross-References.*

Care required of persons operating, see "Highways," § 174.  
 Contributory negligence of driver injured by street car, see "Street Railroads," § 98.  
 Contributory negligence of person injured by automobile, see "Highways," § 173.  
 Criminal responsibility for excessive speed, see "Highways," § 186.

Driving at excessive speed as misdemeanor, see "Criminal Law," § 27.  
 Garage as nuisance, see "Nuisance," § 3.  
 Injuries from negligent operation in city street, see "Municipal Corporations," § 705.  
 Liability of employer for acts of chauffeur, see "Master and Servant," § 301.  
 Liability of owner or operator of automobile for injuries caused by frightening animals on highway, see "Highways," § 181.  
 License regulations as class legislation, see "Constitutional Law," § 208.  
 License taxes, see "Licenses," §§ 1, 5, 7, 14, 29.  
 Lien of garage keeper for storage charges, see "Warehousemen," § 30.  
 Mutual rights and duties of travelers in automobiles and on foot, see "Highways," § 173.  
 Ordinance requiring display of numbers as requiring operators to furnish evidence against themselves, see "Witnesses," § 293.  
 Prohibiting running on country roads after sunset, see "Highways," § 166.  
 Regulation as denial of due process of law, see "Constitutional Law," § 292.  
 Regulation of speed in public parks, see "Municipal Corporations," § 721.  
 Regulation of speed on highway, see "Highways," §§ 165, 166.  
 Regulation of speed on highway as class legislation, see "Constitutional Law," § 208.  
 Right to use highways, see "Highways," § 169.  
 Subject and title of act regulating use, see "Statutes," § 123.  
 Validity of municipal regulations, see "Municipal Corporations," §§ 702-707.

## AUTOPSY.

*Cross-References.*

Civil liability for illegal autopsy, see "Dead Bodies," § 9.  
 Coroner's inquest, see "Coroners," § 14.  
 Coroner's inquest, evidence of in prosecution for homicide, see "Homicide," §§ 222-227.

*Annotation.*

1 Words and Phrases, 650.

## AUTREFOIS ACQUIT AND CONVICT

*Cross-Reference.*

See "Criminal Law," §§ 161-204, 289-297.

*Annotation.*

1 Words and Phrases, 650.

## AVERAGE.

*Cross-References.*

General average, see "Shipping," §§ 186-202.  
 General average, rights and liabilities of insurers, see "Insurance," §§ 477, 478.

*Annotation.*

1 Words and Phrases, 652, 653.

**AVOCATION.***Cross-References.*

- Exemption of property or wages from seizure and sale, see "Exemptions," §§ 31-61.
- Particular occupations subject of license, see "Licenses," §§ 10-18.
- Prohibition of usual occupation on Sunday, see "Sunday," §§ 4, 5.

*Annotation.*

- 1 Words and Phrases, 654.

**AVOIDANCE.***Cross-References.*

- Cancellation of written instruments, see "Cancellation of Instruments."
- Of charter party, see "Shipping," § 38.
- Of composition with creditors, see "Compositions with Creditors," § 22.
- Of compromise and settlement, see "Compromise and Settlement," § 18.
- Of contract, see "Contracts," §§ 249-274.
- Of contract for exchange of property, see "Exchange of Property," § 5.
- Of contract of employment, see "Master and Servant," § 7.
- Of contract of sale, see "Sales," §§ 91, 92, 95-134; "Vendor and Purchaser," §§ 84, 85, 88-127.
- Of contract of sale of corporate stock, see "Corporations," § 117.
- Of contract on account of usury, see "Usury," §§ 89-125.
- Of contract or conveyance between husband and wife, see "Husband and Wife," § 52.
- Of contract or conveyance of infant, see "Infants," §§ 31, 58.
- Of contract or conveyance of insane person, see "Insane Persons," §§ 66, 67, 79.
- Of contract or conveyance of married woman, see "Husband and Wife," §§ 74, 90, 201.
- Of contract with municipal corporation, see "Municipal Corporations," §§ 252, 354.
- Of contract with state, see "States," § 106.
- Of contract with United States, see "United States," § 72.
- Of conveyance by husband in fraud of wife, see "Husband and Wife," § 6.
- Of deed, see "Deeds," § 178.
- Of deed of homestead, see "Homestead," §§ 131-133.
- Of gift, see "Gifts," §§ 41, 74-76.
- Of insurance policy, see "Insurance," § 730.
- Of lease, see "Landlord and Tenant," § 34.
- Of marriage contract, see "Breach of Marriage Promise," § 9.
- Of marriage settlements, see "Husband and Wife," §§ 32-34.
- Of mining lease, see "Mines and Minerals," § 59.
- Of mortgage, see "Chattel Mortgages," § 78.
- Of mortgage of married woman's separate property, see "Husband and Wife," §§ 169, 171.
- Of stipulation, see "Stipulations," § 12.
- Pleading matter in avoidance, see "Pleading," §§ 180-187.

*Annotation.*

- 1 Words and Phrases, 654, 655.

**AVOWRY.***Cross-Reference.*

- In replevin, see "Replevin," § 64.

*Annotation.*

- 1 Words and Phrases, 655.

**AVULSION.***Cross-Reference.*

- See "Navigable Waters," § 45.

*Annotation.*

- 1 Words and Phrases, 655, 656.

**AWARD.***Cross-References.*

- For separate maintenance of wife, see "Husband and Wife," § 298.
- For support and expenses in bastardy proceedings, see "Bastards," § 78.
- In proceedings to apportion assets and liabilities of school districts on alteration, see "Schools and School Districts," § 41.
- Of arbitrators, see "Arbitration and Award," §§ 48-89.
- Of commissioners, appraisers or viewers in condemnation proceedings, see "Eminent Domain," §§ 234-237.
- Of costs in civil actions, see "Costs," §§ 73-76, 244.
- Of damages from public improvements, see "Municipal Corporations," §§ 402, 403.
- Of municipal contract to lowest bidder, see "Municipal Corporations," §§ 241, 336.
- On appraisal or arbitration of loss under insurance policy, see "Insurance," § 574.
- Specific performance, see "Specific Performance," § 81.

*Annotation.*

- 1 Words and Phrases, 656-658.

**AWAY-GOING CROPS.***Cross-References.*

- See "Customs and Usages," § 15; "Landlord and Tenant," § 139.

**AWNINGS.***Cross-Reference.*

- Regulation, see "Municipal Corporations," § 667.

*Annotation.*

- 1 Words and Phrases, 658.

**BADGE.***Cross-Reference.*

- Of fraud as to creditors, see "Fraudulent Conveyances," §§ 14-16.

**BAGGAGE.***Cross-References.*

- Carriers of baggage as common carriers, see "Carriers," § 4.
- Of guest at hotel, see "Innkeepers," § 11.
- Of passenger, see "Carriers," §§ 387-408; "Shipping," § 167.

*Annotation.*

- 1 Words and Phrases, 663-670.

# BAIL.

## *Scope-Note.*

[INCLUDES release of persons under arrest, in civil actions or on charges of crime, from such custody, on giving security to appear and answer; right to be admitted to bail; authority to take bail; proceedings in giving and taking bail, and requisites and sufficiency of recognizances, bonds, or undertakings of bail or deposit of money in lieu of bail; rights and liabilities of bail; their discharge or exoneration; breach and forfeiture of recognizances, bonds, etc.; and proceedings to enforce liabilities of bail.

[EXCLUDES liabilities of officers as bail (see "*Sheriffs and Constables*"); and review of decisions relating to bail (see "*Appeal and Error*"; "*Criminal Law*"; "*Certiorari*"; "*Habeas Corpus*"). For complete list of matters excluded, see cross-references, post.]

## *Analysis.*

### **I. In Civil Actions.**

- § 1. Nature and scope of remedy.
- § 2. Right to release without bail.
- § 3. Right to release on bail.
- § 4. Necessity of special bail and entry thereof.
- § 5. Amount of bail.
- § 6. — In general.
- § 7. — Excessive bail.
- § 8. — Increase or reduction.
- § 9. Bond, undertaking, or recognizance.
- § 10. — Necessity and authority to take.
- § 11. — Requisites and validity in general.
- § 12. — Recitals.
- § 13. — Conditions and obligations.
- § 14. — Sureties.
- § 15. — Approval and filing.
- § 16. — Construction and operation.
- § 17. Deposit in lieu of bail.
- § 18. Discharge of sureties.
- § 19. Breach of fulfillment of condition of bond, undertaking, or recognizance.
- § 20. Extent of liability.
- § 21. Proceedings for fixing liability or forfeiture.
- § 22. Relief from liability or forfeiture.
- § 23. — In general.
- § 24. — Surrender of principal.
- § 25. Action or scire facias on bond, undertaking, or recognizance.
- § 26. — Nature and form of remedy.
- § 27. — Right of action.
- § 28. — Defenses.
- § 29. — Jurisdiction and venue.
- § 30. — Time to sue, and limitations.
- § 31. — Parties.
- § 32. — Process and appearance.
- § 33. — Pleading.
- § 34. — Evidence.

**I. In Civil Actions—Continued.**

- § 34(a) — Continuance and stay of proceedings.
- § 35. — Damages.
- § 36. — Trial.
- § 37. — Judgment and enforcement thereof.
- § 38. — Appeal and error.

**II. In Criminal Prosecutions.**

- § 39. Nature and scope of remedy.
- § 40. Right to release without bail.
- § 41. Right to release on bail.
- § 42. — In general.
- § 43. — Bailable offenses.
- § 44. — Pending appeal or error.
- § 45. — After reversal on appeal or error.
- § 46. Jurisdiction and authority to admit to bail.
- § 47. — Courts and judicial officers.
- § 48. — Clerks, sheriffs, and other ministerial officers.
- § 49. Proceedings to admit to bail.
- § 50. Amount of bail.
- § 51. — In general.
- § 52. — Excessive bail.
- § 53. — Increase or reduction.
- § 54. Bond, undertaking, or recognizance.
- § 55. — Requisites and validity in general.
- § 56. — Defects in antecedent proceedings.
- § 57. — Recitals.
- § 58. — Description of offense.
- § 59. — Condition and obligations.
- § 60. — Sureties.
- § 61. — Approval and filing.
- § 62. — Construction and operation.
- § 63. Bond, undertaking, or recognizance on appeal.
- § 64. — Requisites and validity in general.
- § 65. — Recitals.
- § 66. — Description of offense.
- § 67. — Description of court.
- § 68. — Conditions and obligations.
- § 69. — Sureties.
- § 70. — Approval and filing.
- § 71. — Construction and operation.
- § 72. — Amendments, and new or additional bonds.
- § 73. Deposit in lieu of bail.
- § 74. Discharge of sureties.
- § 75. Breach or fulfillment of condition of bond, undertaking, or recognizance.
- § 76. Extent of liability.
- § 77. Proceedings for fixing liability or forfeiture.
- § 78. Relief from liability or forfeiture.
- § 79. — In general.
- § 80. — Surrender of principal.



**II. In Criminal Prosecutions—Continued.**

- § 81. Action or scire facias on bond, undertaking, or recognizance.
- § 82. — Nature and form of remedy.
- § 83. — Right of action.
- § 83(a) — Discontinuance and quashing.
- § 84. — Defenses.
- § 85. — Jurisdiction and venue.
- § 86. — Time to sue, and limitations.
- § 87. — Parties.
- § 88. — Process and appearance.
- § 89. — Pleading.
- § 90. — Evidence.
- § 91. — Damages.
- § 92. — Trial.
- § 93. — Judgment and enforcement thereof.
- § 94. — Appeal and error.
- § 95. — Costs.
- § 96. Disposition of proceeds.

*Cross-References.*

- Absence of accused from hearing on application for continuance as breach of bond, see "Criminal Law," § 610.
- Appellate jurisdiction as dependent on amount in controversy, see "Courts," § 231.
- Appellate jurisdiction of proceedings to fix liability of bail as dependent on amount involved, see "Criminal Law," § 1020.
- Appellate jurisdiction on rule to set aside forfeiture as dependent on amount in controversy, see "Courts," § 224.
- Attachment of money of third person deposited in lieu of bail, see "Attachment," § 63.
- Attorneys as bail, see "Attorney and Client," § 17.
- Authority to admit to bail in suspension of sentence, see "Criminal Law," § 982.
- Bail bond reciting appearance at stated time as affecting time for trial, see "Criminal Law," § 575.
- Bail on appeal from justice court, see "Justices of the Peace," § 159.
- Breach of bond as ground for denial of continuance, see "Criminal Law," § 584.
- Certiorari as proper mode of review, see "Criminal Law," § 1011.
- Competency of judge as witness in action on bail bond, see "Witnesses," § 71.
- Conflicting regulations by state and municipality, see "Municipal Corporations," § 592.
- Conspiracy to defraud government by giving straw bail, see "Conspiracy," § 33.
- Constitutionality of acts relating to bail, see "Constitutional Law," §§ 80, 262.
- Courts invested with appellate jurisdiction in general, see "Courts," § 224, 247.
- Default judgment against defendant and bail, see "Judgment," §§ 131, 147.
- Discharge of accused on appeal for delay in prosecution, see "Criminal Law," § 576.
- Discharge of principal in bankruptcy as relieving from liability or forfeiture, see "Bankruptcy," § 431.
- Discharge on prison limits bond, see "Arrest," § 51; "Execution," § 448.
- Effect of absence of witnesses, placed under bond on right to continuance, see "Criminal Law," § 594.
- Enforcement of liability as bail against exempt property, see "Exemptions," § 75.
- Equitable bail, see "Ne Exeat," § 11.
- Estoppel to plead defense to action on bond, see "Estoppel," §§ 18, 32.
- Exceptions to allowance of bail for purpose of review, see "Criminal Law," § 1049.
- Execution against money deposited by creditor of accused, see "Execution," § 54.
- Execution of bail bond on Sunday, see "Sunday," § 30.
- For appearance of witness, see "Witnesses," § 19.
- Forfeiture of as evidence of guilt, see "Criminal Law," § 353.
- Forgery in proceedings to let to bail, see "Forgery," § 44; "Perjury," § 9.
- For stay of execution, see "Execution," § 158; "Justices of the Peace," § 135.
- Garnishment of money deposited in lieu of bail, see "Garnishment," §§ 49, 162.
- Giving fictitious bail as contempt of court, see "Contempt," § 16.
- Habeas corpus to procure discharge of person voluntarily surrendering after release on bail, see "Habeas Corpus," § 11.
- Holding accused to answer, see "Criminal Law," §§ 240, 256.
- In particular proceedings, see "Admiralty," § 55; "Contempt," § 56; "Extradition," § 13; "Habeas Corpus," § 110.
- In prosecution for violation of election laws, see "Elections," § 326.
- Jurisdiction of commitment and bail, see "Criminal Law," § 207.

Liability of county for amount deposited in lieu of bail, see "Counties," § 131.  
 Liability on official bond of justice for failure to account for deposit in lieu of appeal, see "Justices of the Peace," § 29.  
 Limitations against depositor of money in lieu of bail, see "Limitation of Actions," § 66.  
 Limitations applicable to action on bail bond, see "Limitation of Actions," § 24.  
 Mandamus to compel admission to bail, see "Mandamus," § 61.  
 Parties against whom default judgment may be rendered on failure of sheriff to return bail bond with writ or where appearance bail waives plea, see "Judgment," § 97.  
 Practice in federal courts in actions on bail bonds, see "Courts," § 331.  
 Recovery by surety of payment on judgment on forfeiture, see "Principal and Surety," § 171.  
 Refusal to admit to bail as false imprisonment, see "False Imprisonment," § 8.  
 Release of bond to indemnify prisoner's bail, see "Release," § 6.

## I. IN CIVIL ACTIONS.

### *Cross-References.*

Discharge on prison limits bond, see "Arrest," § 51; "Execution," § 448.  
 Equitable bail, see "Ne Exeat," § 11.  
 On appeal in justice's court, see "Justices of the Peace," § 159.  
 Parties against whom default judgment may be rendered on failure of sheriff to return bail bond with writ or where appearance bail waives plea, see "Judgment," § 97.

- § 1. Nature and scope of remedy.
- § 2. Right to release without bail.

### *Cross-References.*

Necessity of special bail, see post, § 4.  
 Right to release on bail, see post, § 3.

(a) Defendants in original attachments may not appear and plead without giving bail.—*Campbell v. Morris*, 3 H. & McH. 535.

- § 3. Right to release on bail.

### *Cross-References.*

Nature and scope of remedy, see ante, § 1.  
 Right to release without bail, see ante, § 2.

- § 4. Necessity of special bail and entry thereof.
- §§ 5, 6, 7, 8. Amount of bail.
- § 9. Bond, undertaking, or recognition.

### *Cross-Reference.*

Forgery of bond, see "Forgery," § 44.

- § 10.— Necessity and authority to take.

Release on bail as former jeopardy, see "Criminal Law," § 176.  
 Requirement of bond as infringement of right to jury trial, see "Jury," § 31.  
 Review of decisions relating to bail, see "Habeas Corpus," §§ 10, 25, 33, 107.  
 Review of discretion of court in proceeding to fix liability of bail, see "Criminal Law," § 1148.  
 Right to bail of Chinese person arrested for deportation, see "Aliens," § 32.  
 Right to jury trial in action on bail bond, see "Jury," § 11.  
 Surrender of principal as affecting commitment, see "Criminal Law," § 999.  
 Time for trial of accused released on bail, see "Criminal Law," § 575.  
 Validity of bail bond where commitment was unauthorized, see "Criminal Law," § 240.  
 Validity of contract to indemnify bail, see "Contracts," § 129.  
 Warrant for arrest on forfeiture of bail, see "Criminal Law," § 218.

- § 11.— Requisites and validity in general.

### *Cross-References.*

Approval and filing, see post, § 15.  
 Construction and operation, see post, § 16.  
 Necessity and authority to admit to bail, see ante, § 10.

- § 12.— Recitals.

- § 13.— Conditions and obligations.

- § 14.— Sureties.

(a) The remedy of a party who by mistake is entered as bail for two, instead of as bail for one, is by motion to correct the original entry, not by motion to quash a sci. fa. which conforms to the record.—*Boyle v. Robinson*, 7 H. & J. 200.

- § 15.— Approval and filing.

- § 16.— Construction and operation.

### *Cross-Reference.*

Requisites and validity in general, see ante, § 11.

- § 17. Deposit in lieu of bail.

### *Cross-Reference.*

Attachment of money of third person deposited in lieu of bail, see "Attachment," § 63.

### *Annotation.*

Right to recover back deposit for release of person illegally detained.—2 L. R. A. (N. S.) 563, note.

- § 18. Discharge of sureties.

### *Cross-Reference.*

Relief from liability or forfeiture, see post, §§ 23, 24.

(a) A final discharge in an insolvency proceeding, after action has been brought for breach of an appearance bond, is a release of all liability on the bond except nominal damages.—*State v. Reaney*, 13 Md. 280.

(b) Enlistment in the army by an insolvent does not discharge the surety on the bond given for his appearance (act 1834, c. 386); since, if the principal cannot be surrendered, it is by reason of his voluntary act, against which the bond is intended to be a security.—*State v. Reaney*, 13 Md. 230.

(c) Upon a scire facias against special bail, the defendants did not plead, but moved the court to enter an exoneretur, on the ground that their principal had petitioned in bankruptcy. The motion was granted, and the defendant appealed, but the appeal was dismissed.—*McArthur v. Martin*, 1 Gill 259.

(d) Bail are exonerated by the discharge of the insolvent in insolvency in another state.—*McKim v. Marshall*, 1 H. & J. 101; *Richmond v. De Young*, 3 G. & J. 64.

(e) Where a surety on a bond pays the debt after judgment against himself and the principal, the bail of the principal, when proceeded against by the creditor, may discharge themselves by pleading and giving such payment in evidence.—*Creager v. Brengle*, 5 H. & J. 234, 9 Am. Dec. 516.

(f) The discharge of the principal, under a bankrupt or insolvent law, before the bail are fixed, entitles them to an exoneretur, without a surrender.—*McKim v. Marshall*, 1 H. & J. 101; *Harrison v. Young*, Id. 102, note; *McCausland v. Waller*, Id. 156.

#### § 19. Breach or fulfillment of condition of bond, undertaking, or recognizance.

(a) Where a bond is taken for the appearance of an insolvent debtor, under act 1805, c. 110, act 1807, c. 150, and act 1808, c. 71, he is bound to appear on the day mentioned in the condition of his bond, or it will be forfeited, though he may appear on some day during the same term of the court.—*Osbourne v. State*, 10 G. & J. 1.

#### § 20. Extent of liability.

##### *Annotation.*

Penalty as limit of liability on bail bond.—55 L. R. A. 391, note.

#### § 21. Proceedings for fixing liability or forfeiture.

#### § 22. Relief from liability or forfeiture.

##### *Cross-Reference.*

Discharge of principal in bankruptcy, see "Bankruptcy," § 481.

#### § 23.— In general.

(a) A motion by the defendant to strike out the bail and appearance for him, on the ground that they were not authorized, will not be allowed, where the object is only to enable him to plead limitations, and where his attorney had examined the papers in season to plead limitations; and, at the time of the motion, the defendant was not precluded from pleading to the merits.—*Schleigh v. Hagerstown Bank*, 4 Gill 806.

#### § 24.— Surrender of principal.

##### *Cross-Reference.*

Habeas corpus to enable bail to surrender principal already in custody in another suit, see "Habeas Corpus," § 25.

(a) Under act 1828, c. 161, it is the privilege of bail in Baltimore county court to surrender his principal at any time during the term at which the fiat is finally entered; and this privilege extends to an adjourned term, although such term is held on the day at which the succeeding term is to commence.—*Dunbar v. Conway*, 11 G. & J. 92.

#### § 25. Action or scire facias on bond, undertaking, or recognizance.

#### § 26.— Nature and form of remedy.

#### § 27.— Right of action.

#### § 28.— Defenses.

##### *Cross-Reference.*

Estoppel to plead defense, see "Estoppel," § 32.

(a) In an action on the bond, the bail cannot well plead that they offered to surrender the principal; they can plead *comperuit ad diem* only.—*Osborn v. Jones*, 4 H. & McH. 5, note.

#### § 29.— Jurisdiction and venue.

#### § 30.— Time to sue, and limitations.

#### § 31.— Parties.

#### § 32.— Process and appearance.

**§ 33.—Pleading.**

(a) If to a scire facias against bail the defendant places his defense by plea upon other grounds than the failure to issue a ca. sa. and to have a return of non est, the omission in the replication to set out such ca. sa. and return cannot be regarded as a substantial defect.—*Colegate v. Savings Inst.*, 11 G. & J. 114.

(b) The remedy of a party who by mistake is entered as a bail for two, instead of as a bail for one, is by motion to correct the original entry, not by motion to quash the sci. fa. which conforms to the record.—*Boyle v. Robinson*, 7 H. & J. 200.

(c) It is not necessary that a sci. fa. should aver the issuing and return of the ca. sa.—*Cappeau's Bail v. Middleton*, 1 H. & G. 154.

(d) If, on a sci. fa. against bail, the bail plead that the principal had been taken on a ca. sa., a replication that the ca. sa. was entered "Not called by consent" is bad on demurrer.—*Rogers v. Lee*, 3 H. & McH. 407.

**§ 34.—Evidence.****§ 34(a).—Continuance and stay of proceedings.***Cross-Reference.*

See 5 Cent. Dig. Bail, § 132.

(a) In a suit on a bail bond, in a court in which the original action was not brought, though that action was still pending in another court, a motion to stay proceedings, after a plea of payment, was overruled.—*Gorsuch v. Holmes*, 4 H. & McH. 4.

(b) An injunction to stay proceedings against the principal stays all proceedings against special bail.—*Webster v. Chew*, 3 H. & McH. 123.

**§ 35.—Damages.****§ 36.—Trial.****§ 37.—Judgment and enforcement thereof.***Cross-Reference.*

Default judgment against defendant and bail, see "Judgment," §§ 131, 147.

**§ 38.—Appeal and error.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**II. IN CRIMINAL PROSECUTIONS.***Cross-References.*

Bail bond reciting appearance at stated time as affecting right to try accused at different time, see "Criminal Law," § 575.

Discharge of accused out on bail for delay in prosecution, see "Criminal Law," § 576.

False affidavit in proceedings to let to bail, as perjury, see "Perjury," § 9.

Holding accused to answer, see "Criminal Law," §§ 240, 256.

Jurisdiction of commitment and bail, see "Criminal Law," § 207.

Release of bond to indemnify prisoner's bail, see "Release," § 6.

Release on bail as former jeopardy, see "Criminal Law," § 176.

Requirement of bond as infringement of right to jury trial, see "Jury," § 81.

Review of decisions relating to bail, see "Criminal Law," § 1049; "Habeas Corpus," §§ 10, 11, 25, 33.

Time for trial of accused out on bail, see "Criminal Law," § 575.

Validity of bond where commitment was unauthorized, see "Criminal Law," § 240.

Validity of contract to indemnify bail, see "Contracts," § 129.

Warrant for arrest on forfeiture of bail, see "Criminal Law," § 218.

**§ 39. Nature and scope of remedy.****§ 40. Right to release without bail.****§§ 41-45. Right to release on bail.***Cross-References.*

Nature and scope of remedy, see ante, § 39.

Certiorari as proper mode of review, see "Criminal Law," § 1011.

Bond, undertaking or recognizance, see post, §§ 63-72.

Effect on right to pass sentence, see "Criminal Law," § 979.

Right to re-arrest pending appeal, see "Criminal Law," § 1083.

*Annotation.*

Bail as matter of right.—39 L. R. A. (N. S.) 752, note.

**§ 46. Jurisdiction and authority to admit to bail.***Cross-References.*

On suspension of sentence, see "Criminal Law," § 982.

Want of as affecting right to pass sentence, see "Criminal Law," § 979.

**§ 47.—Courts and judicial officers.**

(a) A recognizance taken after the constitution had established circuit courts for the counties, conditioned to appear before the "county court," is absolutely void.—*Coleman v. State*, 10 Md. 168.

(b) Const. art. 8, § 1, continued the civil and municipal officers in Howard district in office as such until the election or appointment of officers under the constitution, and the style or title of the old courts was not thereby changed while the judges under the old constitution continued in office. The court, in September, 1851, was held as the court of Howard district of Anne Arundel county. *Held*, that there was no such court as Howard county court in 1851, and an order of the Baltimore City Court, made in such year, to remove a cause to "Howard County Court" and the recognizance taken for the appearance of a party before the "Howard County Court" were void.—*State v. Manly*, 1 Md. 135.

**§ 48.— Clerks, sheriffs, and other ministerial officers.**

**§ 49. Proceedings to admit to bail.**

*Cross-References.*

False affidavit, see "Perjury," § 6.

Mandamus to compel admission to bail, see "Mandamus," § 61.

**§ 50. Amount of bail.**

*Annotation.*

Amount of bail.—39 L. R. A. (N. S.) 784, note.

**§ 51.— In general.**

**§ 52.— Excessive bail.**

(a) Const. U. S. Amend. art. 8, prohibiting the requiring of excessive bail, does not apply to state governments.—*Foot v. State*, 59 Md. 264. [*Cited and annotated in 35 L. R. A. 565, 569, 579, on cruel and unusual punishments.*]

**§ 53.— Increase or reduction.**

*Cross-Reference.*

Appealability of rulings on, see "Criminal Law," § 1023.

**§ 54. Bond, undertaking, or recognizance.**

*Cross-References.*

On appeal, see post, §§ 63-72.

Execution of bond on Sunday, see "Sunday," § 30.

**§ 55.— Requisites and validity in general.**

*Cross-References.*

Recitals, see post, § 57.

Validity as common-law obligation of invalid bail bond, see "Bonds," § 35.

(a) Where an infant or other incompetent prisoner is committed to bail, his sureties may be required to enter into the recognizance of bail, without his joining therein himself.—*Schultze v. State*, 43 Md. 295.

(b) Where the judge of a circuit court has power to take a recognizance, it is no objection to it that it was taken in open court, accompanied by the forms and solemnities of a judicial tribunal.—*Parrish v. State*, 14 Md. 238.

**§ 56.— Defects in antecedent proceedings.**

**§ 57.— Recitals.**

*Cross-Reference.*

Requisites and validity in general, see ante, § 55.

**§ 58.— Description of offense.**

**§ 59.— Conditions and obligations.**

(a) A recognizance, taken after the constitution had established circuit courts for the counties, conditioned to appear before the "county court," is absolutely void.—*Coleman v. State*, 10 Md. 168.

(b) A recognizance to appear on the "— day of April next" is void.—*Coleman v. State*, 10 Md. 168.

(c) Const. art. 8, § 1, continued the civil and municipal officers in Howard district in office as such until the election or appointment of officers under the constitution, and the style or title of the old courts was not thereby changed while the judges under the old constitution continued in office. The court, in September, 1851, was held as the court of Howard district of Anne Arundel county. *Held*, that there was no such court as Howard county court in 1851, and an order of the Baltimore City Court, made in such year, to remove a cause to "Howard County Court," and the recognizance taken for the appearance of the party before the "Howard County Court," were void.—*State v. Manly*, 1 Md. 135.

**§ 60.— Sureties.**

*Cross-Reference.*

Lack of as affecting right to sentence, see "Criminal Law," § 979.

**§ 61.— Approval and filing.**

**§ 62.— Construction and operation.**

## §§ 63-72. Bond, undertaking, or recognizance on appeal.

### Cross-References.

Appeal bond as substitute for recognizance, see "Criminal Law," § 1076.  
 Forgery of bond, see "Forgery," § 44.  
 Requirement of bond as infringement of right to jury trial, see "Jury," § 31.  
 Discharge of bail by taking appeal bond, see post, § 74.

### Annotation.

Rules governing appellate court on application for bail.—39 L. R. A. (N. S.) 784, note.

## § 73. Deposit in lieu of bail.

### Cross-References.

See ante, § 53.  
 Execution against money deposited by creditor of accused, see "Execution," § 54.  
 Liabilities on official bond of justice of the peace for failure to account for deposit, see "Justices of the Peace," § 29.  
 Liability of county for amount of deposit, see "Counties," § 131.  
 Limitations against depositor, see "Limitation of Actions," § 66.  
 Presumption as to ownership of deposit in garnishment proceedings, see "Garnishment," § 162.  
 Subject to garnishment, see "Garnishment," § 49.

## § 74. Discharge of sureties.

### Cross-References.

By performance of conditions, see post, § 75.  
 Relief from liability or forfeiture, see post, §§ 79-95.

### Annotation.

Effect of granting new trial after a conviction, to extend the liability of accused's bond.—20 L. R. A. (N. S.) 861, note.

(a) If a party who has recognized to appear to answer to an indictment appears accordingly, and is discharged by the judgment of the court, without day, and that judgment is reversed upon a writ of error, and the record remanded, with directions to proceed with the prosecution, the recognizance cannot be forfeited, if the party fails to reappear to answer to the indictment.—*State v. Murphy*, 10 G. & J. 365. [Cited and annotated in 20 L. R. A. (N. S.) 862, on effect of granting new trial after conviction, to extend liability of accused's bond.]

## § 75. Breach or fulfillment of condition of bond, undertaking, or recognizance.

### Cross-References.

Discharge of sureties, see ante, § 74.  
 Absence of accused from hearing of application for continuance as breach, see "Criminal Law," § 610.  
 As ground for denial of continuance of prosecution, see "Criminal Law," § 584.

## § 76. Extent of liability.

(a) A writ of scire facias on a forfeited recognizance recited that E. acknowledged himself to stand justly indebted to the state in the sum of \$700, and J. also acknowledged himself to stand justly indebted to the state in the sum of \$700, "which they and each of them acknowledge themselves, and each of them, severally, to owe and stand justly indebted to the state in the sum of \$700, which said sum they and each of them acknowledged shall be made and levied of their respective bodies," etc., in case E. should not appear, etc., and that "the said E. and J., although severally solemnly called," etc. *Held*, that this was a several, and not a joint, recognizance.—*Parrish v. State*, 14 Md. 238.

## § 77. Proceedings for fixing liability or forfeiture.

### Cross-References.

Appellate jurisdiction as dependent on amount involved, see "Criminal Law," § 1020.  
 Review of discretion of court, see "Criminal Law," § 1148.  
 Judgment as evidence in action on bond, see post, § 90.

(a) After the passage of the act establishing circuit courts, and abolishing county courts, a recognizance was taken for appearance in the county court. *Held*, that the circuit court had no jurisdiction to forfeit it.—*Coleman v. State*, 10 Md. 168.

## §§ 78-80. Relief from liability or forfeiture.

### Cross-References.

Appellate jurisdiction dependent on amount involved, see "Criminal Law," § 1020.  
 As affecting commitment, see "Criminal Law," § 999.  
 Habeas corpus to bring up prisoner for surrender in discharge of bail, see "Habeas Corpus," § 25.

Necessity of order of arrest, see "Criminal Law," § 263.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 81. Action or scire facias on bond, undertaking, or recognizance.

#### *Cross-Reference.*

Practice in federal courts, see "Courts," § 831.

### § 82.— Nature and form of remedy.

### § 83.— Right of action.

### § 83(a).—Discontinuance and quashing.

#### *Cross-Reference.*

See 5 Cent. Dig. Bail, § 378.

(a) A scire facias which conforms to the record cannot be quashed on the ground that defendant was erroneously entered as bail for two, instead of bail for one.—Boyle v. Robinson, 7 H. & J. 200.

### § 84.— Defenses.

#### *Cross-References.*

Effect of defects in antecedent proceedings, see ante, § 56.

Absence of accused for providential cause from hearing of application for continuance, as defense, see "Criminal Law," § 610.

Estoppel to plead defense, see "Estoppel," § 18.

(a) After the adoption of the present constitution establishing circuit courts for the counties, a recognizance was taken to appear before the "county court," to be held "on the ——— day of April next." Held, that this was a void recognizance, being for the party's appearance before a tribunal which had no existence, and at no fixed day, and that this objection might be taken on scire facias.—Coleman v. State, 10 Md. 168.

### § 85.— Jurisdiction and venue.

### § 86.— Time to sue, and limitations.

#### *Cross-Reference.*

Limitations applicable, see "Limitation of Actions," § 24.

### § 87.— Parties.

(a) Where a recognizance by two or more is several and not joint, a joint scire facias against the recognizers cannot be sustained.—Parrish v. State, 14 Md. 238.

### § 88.— Process and appearance.

### § 89.— Pleading.

(a) The objection that a scire facias, issued on a recognizance which is several, is not several, but joint, can be taken advantage of by demurrer.—Parrish v. State, 14 Md. 238.

### § 90.— Evidence.

#### *Cross-Reference.*

Competency of judge as witness, see "Witness," § 71.

### § 91.— Damages.

### § 92.— Trial.

#### *Cross-Reference.*

Right to trial by jury, see "Jury," § 11.

### § 93.— Judgment and enforcement thereof.

#### *Cross-Reference.*

Absence at trial ground for default judgment, see "Judgment," § 109.

(a) A recognizance is an obligation of record, and, when forfeiture is declared and entered by the court, it becomes a judgment which is enforceable by execution, and embraced within the terms of Code 1860, art. 18, § 5, as amended and re-enacted by the act of 1865, c. 5, providing for the issuing of an execution to another county from that in which the judgment is rendered.—Schultze v. State, 43 Md. 295. (For present law, see Code 1911, art. 17, § 7.)

### § 94.— Appeal and error.

#### *Cross-Reference.*

Courts invested with appellate jurisdiction, see "Courts," §§ 224, 231, 247.

### § 95.— Costs.

### § 96. Disposition of proceeds.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## BAILIFFS.

#### *Cross-References.*

See "Sheriffs and Constables," § 24.

Attendance at sessions of grand jury, see "Grand Jury," § 32.

Court bailiffs, see "Courts," § 58.

Holding other office, see "Officers," § 30.

#### *Annotation.*

1 Words and Phrases, 672, 673.

## BAIL TROVER.

#### *Cross-Reference.*

See "Replevin."

# BAILMENT.

## *Scope-Note.*

[INCLUDES contracts for transfer of possession of personal property without transfer of ownership in general; rights, duties, and liabilities of the parties; and remedies relating thereto.

[EXCLUDES conditional sales (see "*Sales*"); liens (see "*Liens*"); particular species of bailment, and bailments incident to particular occupations (see "*Pledges*"; "*Depositaries*"; "*Banks and Banking*"; "*Warehousemen*"; "*Innkeepers*"; "*Carriers*"; "*Factors*"; and other specific heads); and embezzlement or larceny by bailees (see "*Embezzlement*"; "*Larceny*"). For complete list of matters excluded, see cross-references, post.]

## *Analysis.*

- § 1. Nature and elements in general.
- § 2. Particular forms of bailment.
- § 3. Validity in general.
- § 4. Subject-matter.
- § 5. Delivery and acceptance.
- § 6. Title and rights to property.
- § 7. — In general.
- § 8. — Estoppel of bailee to deny title of bailor.
- § 9. Condition of and defects in property, and negligence of bailor.
- § 10. Care and use of property, and negligence of bailee.
- § 11. — In general.
- § 12. — Bailments for sole benefit of bailor.
- § 13. — Bailments for sole benefit of bailee.
- § 14. — Bailments for mutual benefit.
- § 15. Performance of services by bailee.
- § 16. Conversion by bailee.
- § 17. Wrongful delivery by bailee.
- § 18. Compensation and lien of bailee.
- § 19. Reimbursement and indemnity of bailee.
- § 20. Compensation of bailor for use of property.
- § 21. Rights and liabilities as to third persons.
- § 22. Termination.
- § 23. Redelivery of property.
- § 24. Actions between bailor and bailee.
- § 25. — Nature and form.
- § 26. — Conditions precedent.
- § 27. — Defenses.
- § 28. — Time to sue, and limitations.
- § 29. — Parties.
- § 30. — Pleading.
- § 31. — Evidence.
- § 32. — Damages.
- § 33. — Trial.
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- § 35. Actions by or against third person.



*Cross-References.*

Adverse possession as between bailor and bailee, see "Adverse Possession," § 64.  
 As affecting title or rights vesting in trustee in bankruptcy, see "Bankruptcy," § 140.  
 As constituting transactions fraudulent as to creditors, see "Fraudulent Conveyances," § 36.  
 Custom as to obligation of bailee to deliver, see "Customs and Usages," § 15.  
 Delivery of attached property to bailee or receptor, see "Attachment," §§ 188-190.  
 Delivery of deed as constituting bailment or escrow, see "Escrows," § 4.  
 Distinction between bailment and sale, see "Sales," § 4.  
 Distinguished from conditional sale, see "Sales," § 456.  
 Distinguished from relation of carrier and shipper, see "Carriers," § 4.  
 Distinguished from relation of master and servant, see "Master and Servant," § 1.  
 Distress for rent, property in possession of tenant as subject to, see "Landlord and Tenant," § 269.  
 Duration of lien of judgment against bailor, see "Judgment," § 796.  
 Duties and liabilities of finder of lost goods, see "Finding Lost Goods," § 7.  
 Effect of modification of contract, see "Contracts," § 246.  
 Embezzlement by bailee, see "Embezzlement," § 16.  
 Garnishment of property in possession of bailee, see "Garnishment," §§ 54-56.  
 Grounds for continuance of prosecution for theft as bailee, see "Criminal Law," § 595.  
 Imputation of contributory negligence as between bailor and bailee, see "Negligence," § 90.  
 Larceny by bailee, see "Larceny," §§ 15, 36.  
 Larceny by owner, see "Larceny," § 9.

Larceny from bailee, allegations as to ownership, see "Larceny," § 82.  
 Penitentiary funds, liability of officer, see "Prisons," § 10.  
 Possession by vendor as bailee affecting validity of conveyance as to creditors, see "Fraudulent Conveyances," § 144.  
 Right of action by bailee for injuries to animal on railroad track, see "Railroads," § 429.  
 Right of bailee to counterclaim for conversion, see "Set-Off and Counterclaim," § 46.  
 Right of bailor to recover goods pawned by bailee, see "Pawnbrokers," § 5.  
 Rights of bailor's undisclosed principal, see "Principal and Agent," § 143.  
 Waiver of bailee's lien by presentation of claim against deceased bailor's estate, see "Executors and Administrators," § 241.  
 Waiver of bailee's lien on property assigned for benefit of creditors, see "Assignments for Benefit of Creditors," § 339.  
*Particular species of bailments, and bailments incident to particular occupations.*  
 See "Depositaries"; "Factors"; "Innkeepers," § 11; "Livery Stable Keepers"; "Pawnbrokers"; "Pledges"; "Warehousemen."  
 Agistment, see "Animals," §§ 22-26.  
 Carriage of goods, see "Carriers," §§ 39-202; "Shipping," §§ 101-155.  
 Charter party, see "Shipping," §§ 34-58.  
 Deposit of property in court, see "Deposits in Court," § 1.  
 Deposits in banks, see "Banks and Banking," §§ 119-155.  
 Hiring and use of animals, see "Animals," § 27.  
 Hiring of slaves, see "Slaves," § 8.  
 Stakeholders, see "Gaming," §§ 28, 29.

**§ 1. Nature and elements in general.***Annotation.*

Bailment distinguished from sale.—10 L. R. A. 238, note.

(a) The placing of a gas meter and fixtures by a gas company in the premises of a consumer is not a bailment.—Blondell v. Consolidated Gas Co. of Baltimore City, 89 Md. 782, 48 Atl. 817, 46 L. R. A. 187; Consolidated Gas Co. of Baltimore City v. Blondell, Id.

(b) The state of Maryland, in requiring that tobacco be brought to the state warehouses for inspection for revenue purposes, in no sense becomes a bailee of the tobacco.—Moore v. State, 47 Md. 467, 28 Am. Rep. 483.

(c) To constitute the relation of bailor and bailee, there must be evidence of title in the bailor of the property bailed.—Tome v. Parkersburg Branch R. Co., 39 Md. 36, 17 Am. Rep. 540.

**§ 2. Particular forms of bailment.***Cross-Reference.*

Warehouse receipts, see "Warehousemen," § 14.

**§ 3. Validity in general.****§ 4. Subject-matter.****§ 5. Delivery and acceptance.***Cross-Reference.*

Re-delivery, see post, § 23.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 6. Title and rights to property.***Cross-Reference.*

As affecting title or rights vesting in trustee in bankruptcy, see "Bankruptcy," § 140.

**§ 7.— In general.***Cross-Reference.*

Time to sue, see post, § 29.

(a) The right of a plaintiff to recover property is not barred by the possession of defendant under claim of title for more than three years before suit, if the possession was acquired under a loan, and plaintiff had no knowledge, three years before suit, of the claim of title.—*Callis v. Tolson*, 6 G. & J. 80.

**§ 8.— Estoppel of bailee to deny title of bailor.***Cross-Reference.*

Adverse possession as between bailor and bailee, see "Adverse Possession," § 64.

**§ 9. Condition of and defects in property, and negligence of bailor.***Cross-Reference.*

See "Explosives," § 7.

**§ 10. Care and use of property, and negligence of bailee.***Cross-References.*

Negligence as question for jury, see post, § 33.

Presumptions and burden of proof, see post, § 31.

Livery stable keepers, see "Livery Stable Keepers," § 7.

*Annotation.*

Care required of keeper of boarding stable.—23 L. R. A. (N. S.) 183, note.

**§ 11.— In general.****§ 12.— Bailments for sole benefit of bailor.***Annotation.*

Liability of gratuitous bailee.—10 L. R. A. 481, note.

(a) When the bailment is for the sole benefit of the bailor, the law requires only slight diligence or ordinary care on the part of the bailee, and makes him answerable only for gross neglect.—*Maury v. Cole*, 34 Md. 235. [Cited and annotated in 32 L. R. A. 772, on care required of bank in keeping special deposit]; *Schermer v. Neurath*, 54 Md. 491.

**§ 13.— Bailments for sole benefit of bailee.**

(a) S. loaned a sulky, the property of his

father, but which was in his possession and under his control, to C., that the latter might exercise his horse. The horse, while being exercised, ran away, and damaged the sulky. Held, that C. was liable for the damage.—*Casey v. Suter*, 36 Md. 1.

**§ 14.— Bailments for mutual benefit.**

(a) A bailee for hire is not liable for an accidental injury to the property not caused by his negligence.—*Darby Candy Co. of Baltimore City v. Hoffberger*, 111 Md. 84, 73 Atl. 565. [Cited and annotated in 43 L. R. A. (N. S.) 1184, on presumption and burden of proof as to care or negligence in respect to subject of bailment.]

(b) Defendant, whose business was the carriage of parcels, and the performance of errands and commissions, having undertaken to deliver a team of horses and wagon at a certain place, for a reward, was liable for damage thereto caused by the negligence of a boy whom it sent to drive the team.—*American Dist. Tel. Co. v. Walker*, 72 Md. 454, 20 Atl. 1, 20 Am. St. Rep. 479. [Cited and annotated in 2 L. R. A. (N. S.) 1093, on duty and liability for conduct of messenger furnished for others.]

(c) Bailees for hire must exercise ordinary care or such care as prudent men exercise in the conduct of their own affairs.—*Hambleton v. McGee*, 19 Md. 43. [Cited and annotated in 43 L. R. A. (N. S.) 1184, on presumption and burden of proof as to care or negligence in respect to subject of bailment.]

**§ 15. Performance of services by bailee.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 16. Conversion by bailee.***Cross-References.*

Embezzlement by bailee, see "Embezzlement," § 16.

Larceny by bailee, see "Larceny," §§ 15, 36.

Right of bailor to recover goods pawned by bailee, see "Pawnbrokers," § 5.

(a) The use by a gratuitous bailee of one of the bonds deposited with him, as security for money borrowed, does not make him liable to the bailor for the conversion of the others, which were stolen from his posses-

ation.—*Schermer v. Neurath*, 54 Md. 491, 39 Am. Rep. 397.

(b) If a bailee says he "will not deliver the goods to any person whatsoever," it is a refusal to seller and buyer, and amounts to a conversion.—*Buel v. Pumphrey*, 2 Md. 261, 56 Am. Dec. 714.

(c) If a bailor of property sell it, the demand of the bailee must be made by the purchaser.—*Buel v. Pumphrey*, 2 Md. 261, 56 Am. Dec. 714.

(d) In trover, for corn placed in the warehouse of the defendant on storage, and which they refused to deliver, claiming to retain it for the payment of a debt due to them from the plaintiff, it was *held* that as there was no evidence that the corn was delivered to the defendants to be applied by them to the discharge of the debt due by the plaintiff to them, or was placed in their hands as factors, with authority to sell the same, the plaintiff was entitled to recover.—*Hopkins v. Stump*, 2 H. & J. 300.

(e) If the thing bailed is used in a different manner, or for a different purpose, or for a longer time, than was agreed by the parties, the hirer is guilty of a conversion, and is answerable for all damages, and even for a loss which due care could not have prevented.—*Clagett v. Speake*, 4 H. & McH. 162.

## § 17. Wrongful delivery by bailee.

### Cross-Reference.

Re-delivery, see post, § 23.

### Annotation.

Duty of carrier to recognize demands of stranger on property delivered to it for transportation.—12 L. R. A. (N. S.) 254, note.

## § 18. Compensation and lien of bailee.

### Cross-References.

Construction of statutes in derogation of common law, see "Statutes," § 239.  
Identification of act repealed relating to agister's liens, see "Statutes," § 154.  
Liberal or strict construction of statute, see "Statutes," § 236.  
Waiver of lien by presentation of claim against deceased bailor's estate, see "Executors and Administrators," § 241.  
Waiver of lien on property assigned for benefit of creditors, see "Assignment for Benefit of Creditors," § 339.  
Action to recover compensation in general, see post, § 25.

## § 19. Reimbursement and indemnity of bailee.

## § 20. Compensation of bailor for use of property.

## § 21. Rights and liabilities as to third persons.

### Cross-Reference.

Actions by or against third persons, see post, § 35.

## § 22. Termination.

## § 23. Redelivery of property.

### Cross-References.

As question for jury, see post, § 33.

Wrongful delivery by bailee, see ante, § 17.

Custom as to obligation of bailee to deliver, see "Customs and Usages," § 15.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 24. Actions between bailor and bailee.

### Cross-References.

Actions by or against third persons, see post, § 35.

Enforcement of lien for compensation, see ante, § 18.

Jurisdiction of cause of action accruing in other state, see "Courts," § 7.

Jurisdiction of federal court of suit by pledgee as dependent on citizenship of pledgor, see "Courts," § 312.

Jurisdiction of justices of the peace, see "Justices of the Peace," § 37.

### Annotation.

Right of bailee to assert against his bailor the hostile, adverse, paramount title of a third person.—33 L. R. A. (N. S.) 681, note.

## § 25.— Nature and form.

### Cross-References.

Contract or tort, see "Action," § 27.

Right to recover for injury to or conversion of property hired on Sunday, see "Sunday," § 19.

Waiver of tort, see "Action," § 28.

## § 26.— Conditions precedent.

## § 27.— Defenses.

### Cross-Reference.

Discharge from liability by part payment, see "Accord and Satisfaction," § 7.

## § 28.— Time to sue, and limitations.

### Cross-References.

Accrual of right of action, see "Limitation of Actions," § 103.

Limitation of actions, see "Limitation of Actions," § 66.

(a) The right of a plaintiff to recover property is not barred by the possession of

defendant under claim of title for more than three years before suit, if the possession was acquired under a loan, and plaintiff had no knowledge, three years before suit, of the claim of title.—*Callis v. Tolson*, 6 G. & J. 80.

### § 29.—Parties.

(a) Where plaintiff loaned a sulky, the property of his father, but which was in his possession and under his control, to defendant, he may sue for damages in his own name.—*Casey v. Suter*, 36 Md. 1.

### § 30.—Pleading.

#### *Cross-Reference.*

Pleading in justice's court, see "Justice of the Peace," § 91.

### § 31.—Evidence.

#### *Cross-Reference.*

Failure to deliver chattel within reasonable time after demand as presumptive evidence of conversion, see ante, § 16.

(a) Bailor for hire, suing for injury to property, has the burden of proving want of reasonable and proper care, and also casual connection between this and injury.—*Darby Candy Co. of Baltimore City v. Hoffberger*, 111 Md. 84, 73 Atl. 565. [*Cited and annotated* in 48 L. R. A. (N. S.) 1184, on presumption and burden of proof as to care or negligence in respect to subject of bailment.]

(b) The burden of proving negligence in the use of property hired by the bailee is upon the bailor.—*Hambleton v. McGee*, 19 Md. 43. [*Cited and annotated* in 48 L. R. A. (N. S.) 1184, on presumption and burden of proof as to care or negligence in respect to subject of bailment.]

### § 32.—Damages.

#### *Cross-Reference.*

Sufficiency of evidence as to extent of damage, see "Damages," § 188.

(a) One who has property in his possession as bailee may recover the full amount of damages thereto, caused by the negligence of a third party.—*American Dist. Tel. Co. v. Walker*, 72 Md. 454, 20 Atl. 1, 20 Am. St. Rep. 479.

(b) In an action to recover for the value of bonds stolen from the bailee, the measure of damages is their market value at the time of the larceny.—*Third Nat. Bank v. Boyd*, 44 Md. 47, 22 Am. Rep. 85.

### § 33.—Trial.

### § 34.—Judgment and review.

### § 35. Actions by or against third persons.

#### *Cross-References.*

Actions between bailor and bailee, see ante, §§ 25-34.

Right and liability in general as to third persons, see ante, § 21.

Limitations, see "Limitation of Actions," § 55.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## BAKERS.

#### *Cross-Reference.*

Hours of service of employees, see "Master and Servant," § 13.

#### *Annotation.*

1 Words and Phrases, 677.

## BALANCE.

#### *Cross-References.*

See "Account"; "Account Stated."

#### *Annotation.*

1 Words and Phrases, 677, 679.

## BALLOTS.

#### *Cross-References.*

See "Elections," §§ 160-196.

Local option elections, see "Intoxicating Liquors," § 34.

#### *Annotation.*

1 Words and Phrases, 680, 681.

## BANISHMENT.

#### *Cross-References.*

Exclusion or expulsion of aliens, see "Aliens," §§ 18-59.

For crime, see "Criminal Law," § 1208.

#### *Annotation.*

1 Words and Phrases, 682.

## BANKABLE PAPER.

#### *Cross-Reference.*

See "Contracts," § 193.

# BANKRUPTCY.\*

## *Scope-Note.*

[INCLUDES administration of estates of bankrupts under general bankrupt laws for the purpose of distribution of the assets among creditors, and discharge of the bankrupts from liability for their debts; constitutional and statutory provisions relating thereto; what constitutes bankruptcy; nature, grounds, limits, and subjects of jurisdiction in bankruptcy cases; and procedure therein.

[EXCLUDES insolvency under local insolvent laws (see "*Insolvency*"); and organization, etc., of courts having jurisdiction in bankruptcy (see "*Courts*"). For complete list of matters excluded, see cross-references, post.]

## *Analysis.*

### **I. Constitutional and Statutory Provisions.**

- § 1. Constitutional grant of power.
- § 2. Bankruptcy acts.
- § 3. ——— Constitutionality.
- § 4. ——— Construction and operation in general.
- § 5. ——— Time of taking effect.
- § 6. ——— Retroactive operation.
- § 7. ——— Amendments.
- § 8. ——— Repealing acts.
- § 9. Effect of bankruptcy acts on state insolvency laws and proceedings.
- § 10. Foreign bankrupt laws.

### **II. Petition, Adjudication, Warrant, and Custody of Property.**

#### **(A) JURISDICTION AND COURSE OF PROCEDURE IN GENERAL.**

- § 11. Jurisdiction of courts of bankruptcy in general.
- § 12. Persons subject to jurisdiction.
- § 13. ——— Character or capacity.
- § 14. ——— Place of business, residence, or domicile.
- § 15. ——— Partners.
- § 16. ——— Corporations.
- § 17. Process or notice necessary to jurisdiction.
- § 18. Conflicting jurisdiction of courts of bankruptcy.
- § 19. Transfer and consolidation of cases in different courts.
- § 20. Conflicting jurisdiction of courts of bankruptcy and state courts.
- § 21. Objections to jurisdiction.
- § 22. Rules, forms, and orders as to procedure.
- § 23. Commencement of proceedings.
- § 24. Representation by attorneys, and appearance.
- § 25. Disability or death of debtor before adjudication.
- § 27. Schedules.
- § 28. ——— Duty to file.
- § 29. ——— Requisites in general.
- § 30. ——— Of property.
- § 31. ——— Of creditors.
- § 32. ——— Amendment.

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\*The value of a case involving a question of bankruptcy law often depends upon a comparison of the terms of the bankruptcy act in force at the date of the decision with the terms of the present act. In order to keep this point before the investigator and to facilitate his labors the date of each decision set out in this article is given at the head of the respective paragraphs.

**II. Petition, Adjudication, Warrant, and Custody of Property—Continued.**

**(A) JURISDICTIONS AND COURSE OF PROCEDURE IN GENERAL—Continued.**

- § 33. Oaths and affirmations.
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- § 36. Motions and orders.
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**(B) VOLUNTARY PROCEEDINGS.**

- § 38. Nature of proceedings.
- § 39. Successive proceedings.
- § 40. Persons who may become voluntary bankrupts.
- § 41. — In general.
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- § 45. Filing petition and schedules.
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- § 52. Nature of proceeding.
- § 54. Insolvency of debtor.
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- § 61. — Admission by debtor.
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- § 66. Persons who may be adjudged bankrupt.
- § 67. — In general.
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- § 72. — Nature of corporate business.
- § 73. — Banks and bankers.
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- § 77. — Number and amount of claims.
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**II. Petition, Adjudication, Warrant, and Custody of Property—Continued.****(C) INVOLUNTARY PROCEEDINGS—Continued.**

- § 80. Petition.
- § 81. — Requisites and sufficiency.
- § 82. — Verification.
- § 83. — Depositions accompanying petition.
- § 84. — Amendment.
- § 85. Filing and presentation of petition.
- § 86. Service of petition and process.
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- § 88. Parties.
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- § 101. Possession and control pending proceedings in general.
- § 102. Restraining transfer or disposition by debtor.
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- § 104. — In general.
- § 105. — Proceedings in state courts.
- § 106. Warrant and seizure pending proceedings.
- § 107. — Grounds for seizure.
- § 108. — Application.
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- § 114. Appointment and authority of receiver or marshal pending proceedings.
- § 115. Actions by or against receiver.
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**III. Assignment, Administration, and Distribution of Bankrupt's Estate.****(A) APPOINTMENT, QUALIFICATION, AND TENURE OF TRUSTEE.**

- § 118. Office of trustee.
- § 119. Necessity for appointment.
- § 120. Competency.
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**III. Assignment, Administration, and Distribution of Bankrupt's Estate—Continued.****(A) APPOINTMENT, QUALIFICATION, AND TENURE OF TRUSTEE—Continued.**

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**(B) ASSIGNMENT, AND TITLE, RIGHTS, AND REMEDIES OF TRUSTEE IN GENERAL.**

- § 135. Effect of appointment and qualification.
- § 136. Transfers by bankrupt to trustee under order of court.
- § 137. Property and rights vesting in trustee.
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- § 139. — Real property and interests therein.
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- § 154. Set-offs and counterclaims against trustee.
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**(C) PREFERENCES AND TRANSFERS BY BANKRUPT, AND ATTACHMENT AND OTHER LIENS.**

- § 158. Preferences voidable.
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- § 160. — Insolvency of debtor.
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**III. Assignment, Administration, and Distribution of Bankrupt's Estate—**  
Continued.

**(C) PREFERENCES AND TRANSFERS BY BANKRUPT, AND ATTACHMENT AND  
OTHER LIENS—Continued.**

- § 166. — Knowledge and intent of parties.
- § 167. Preferences of partnership or individual creditors.
- § 168. Rights of trustee as to preferences.
- § 169. Set-off of amount of new credit by creditor preferred.
- § 170. Payment or transfer for legal services to be rendered.
- § 171. Transfers in general.
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- § 173. — Bona fide purchasers.
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- § 175. — In general.
- § 176. — Insolvency of debtor.
- § 177. — Time of making.
- § 178. — Nature and form of transaction.
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- § 207. Subrogation of trustee to rights under lien.
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### III. Assignment, Administration, and Distribution of Bankrupt's Estate—Continued.

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- § 212. — Determination of claims to property.
- § 213. — Foreclosure of mortgages.
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#### (D) ADMINISTRATION OF ESTATE.

- § 219. Jurisdiction of courts.
- § 220. Referees.
- § 221. — Appointment, qualification, and tenure.
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- § 230. — Liabilities of referees and their sureties.
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- § 238. — Production of documents.
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- Acknowledgment of power of attorney to creditor's proxy, see "Acknowledgment," § 30.
- Admissions by bankrupts, see "Evidence," § 232.
- Appearance by bankrupt partner in action against firm, see "Appearance," § 2.
- Appointment of provisional receiver for bankrupt's property as deprivation of property without due process of law, see "Constitutional Law," §§ 278, 312.
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- Assignment of mechanic's lien by bankrupt to trustee, see "Mechanics' Liens," § 202.
- As waiver of garnishment, see "Garnishment," § 198.
- Best and secondary evidence of proceedings, see "Evidence," § 158.
- Champertous sale in bankruptcy proceedings, see "Champerty and Maintenance," § 7.
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- Dismissal as to bankrupt co-defendant on court's own motion, see "Dismissal and Nonsuit," § 65.
- Election of remedy by creditors of bankrupt, see "Election of Remedies," §§ 3, 7.
- Estoppel of assignee by deed, see "Estoppel," § 31.
- Estoppel on bankrupt by assertion of title in another, see "Estoppel," § 68.
- Estoppel to claim tax lien against bankrupt's estate, see "Estoppel," § 62.
- Immunity to bankrupt giving incriminating testimony, see "Criminal Law," § 42.
- Interpleader by receiver in bankruptcy, see "Interpleader," § 11.
- Joinder of causes of action affecting estate, see "Action," §§ 38, 48.
- Jurisdiction of federal Supreme Court to review decision of state courts involving bankruptcy acts, see "Courts," § 894.
- Jury trial in actions by trustee, see "Jury," § 14.
- Landlord's lien on bankrupt's property, waiver or forfeiture of lien, see "Landlord and Tenant," §§ 254, 262.
- Malicious institution of proceedings, see "Malicious Prosecution," § 12.
- Of assignor for benefit of creditors as affecting assignee's duty to account in state court, see "Assignments for Benefit of Creditors," § 366.
- Of executor as ground for removal, see "Executors and Administrators," § 35.
- Of government contractor as terminating contract, see "United States," § 78.
- Of party to action, ground for abatement, see "Abatement and Revival," § 43.
- Of party to contract, as discharge, see "Contracts," § 310.
- Of policemen as affecting rule of police commissioners requiring policemen to pay their debts, see "Municipal Corporations," § 181.
- Power of bankruptcy court to re-examine fact tried by jury, see "Jury," § 37.
- Presumptions as to regularity of proceedings, see "Evidence," §§ 82, 83.



Removal of causes relating to estate from state to federal court, see "Removal of Causes," §§ 11, 72.  
 Right of assignee to purchase at tax sale, see "Taxation," § 674.  
 Right of trustee to appointment as administrator, see "Executors and Administrators," § 17.  
 Right of trustee to require administrator to account, see "Executors and Administrators," § 460.  
 Security for costs in actions by trustee, see "Costs," § 109.  
 State laws as rules of decision in courts of bankruptcy, see "Courts," §§ 346, 357,

359, 363, 366, 372, 376.  
 Stipulations affecting rights to estate, see "Stipulations," §§ 13, 14.  
 Summary proceedings to compel surrender of bankrupt's property by officer of state court as denial of due process of law, see "Constitutional Law," § 306.  
 Summary proceedings to compel surrender of property by bankrupt as constituting imprisonment for debt, see "Constitutional Law," § 83.  
 Taxation of bankrupt's property, see "Taxation," §§ 6, 87, 338, 511.  
 Writ of ne exeat, power to issue, see "Ne Exeat," § 4.

## I. CONSTITUTIONAL AND STATUTORY PROVISIONS.

### Cross-References.

Constitutionality of provisions as to jurisdiction of suits by trustee, see post, § 235.  
 Bankruptcy act as impairing obligation of contracts, see "Constitutional Law," § 161.  
 Bankruptcy act failing to provide for notice to creditors as deprivation of property without due process of law, see "Constitutional Law," § 309.  
 Bankruptcy act recognizing local law as constituting delegation of legislative power, see "Constitutional Law," § 60.

### § 1. Constitutional grant of power.

### §§ 2-8. Bankruptcy acts, constitutionality, construction, and effect.

#### Cross-References.

Of provisions relating to compositions, see post, § 381.  
 Of provisions relating to dissolution of liens by adjudication, see post, §§ 198-203.  
 Of provisions relating to surrender of preferences, see post, § 311.  
 Of the term "Estate," see post, § 257.  
 Effect to suspend state insolvent laws, see post, § 9.  
 Allowance of expenses of recovering assets, see post, § 347.  
 Grounds for refusal of discharge, see post, § 407.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 9. Effect of bankruptcy acts on state insolvency laws and proceedings.

### Cross-References.

See post, §§ 184, 209.  
 Conflicting jurisdiction of courts of bankruptcy and state courts, see post, § 20.  
 Validity of assignments for creditors as against trustee in bankruptcy, see post, § 178.  
 Liability of assignee for benefit of creditors to account in state court as affected by assignor's bankruptcy, see "Assignments for Benefit of Creditors," § 366.  
 Assignments for creditors or receivership proceedings as act of bankruptcy, see post, § 60.  
 Pendency of proceedings in state court as ground for dismissal of subsequent voluntary proceedings in bankruptcy court, see post, § 41.

### Annotation.

Effect of bankrupt law on assignments for creditors and on insolvent proceedings under state laws.—45 L. R. A. 177, note.

(a) [1903] Const. U. S. art. 1, § 8, gives Congress power to establish uniform bankruptcy laws. Bankr. Act 1898, § 4, subsec. "a" (U. S. Comp. St. 1901, p. 3423), provides that any debtor except a corporation, may become a voluntary bankrupt, and sub-section "b" enacts that any natural person, "except a wage earner or a person en-

Note.—The several acts of Congress under which the cases here digested were decided are as follows:

General bankruptcy act of April 4, 1800 (2 Stat. 19), repealed by act of December 19, 1803 (2 Stat. 248).

General bankruptcy act of August 19, 1841 (5 Stat. 440), repealed by act of March 3, 1843 (5 Stat. 614).

General bankruptcy act of March 2, 1867 (14 Stat. 517), and amendments as follows: Act July 27, 1868 (15 Stat. 227); act June 30, 1870 (16 Stat. 173); act July 14, 1870 (16 Stat. 276); act July 8, 1872 (17 Stat. 334); act Feb. 13, 1873 (17 Stat. 436); act March 3, 1873, c. 226 (17 Stat. 509); act March 3, 1873, c. 235 (17 Stat. 577); act June 22, 1874 (18 Stat. 178).

General repealing act of June 7, 1878 (20 Stat. 99).

The bankruptcy matter in the Revised Statutes of 1874 is covered by Rev. St. U. S. §§ 4972-5132. General bankruptcy act of July 1, 1898, c. 541, 30 Stat. 544 (U. S. Comp. St. 1901, p. 3423; 1913, 4360); amended by act Feb. 5, 1903, c. 487, act June 15, 1906, c. 3333, and act June 25, 1910, c. 412 (see U. S. Comp. Stat. 1913, p. 4360).

gaged chiefly in farming or tillage of the soil," may be adjudged an involuntary bankrupt. Section 70, subsec. "b," provides that state insolvency proceedings commenced before the passage of the act shall not be affected thereby. Code, art. 47, § 22, enumerates acts of insolvency, and provides that debtors guilty thereof may be proceeded against as insolvents. *Held*, that the state statute was not superseded by the bankruptcy act as to insolvency proceedings begun against a farmer by his creditors, though farmers may become voluntary bankrupts.—*Old Town Bank v. McCormick*, 96 Md. 341, 53 Atl. 934, 60 L. R. A. 577, 94 Am. St. Rep. 577.

(b) [1875] A state insolvency law provided that an insolvent's discharge thereunder should release all his debts existing when his application was made, and that all property acquired by the insolvent by inheritance after his discharge should vest in his trustee in insolvency for benefit of existing creditors at the time of the insolvent's application. After an insolvent had been discharged, the national bankrupt act of 1841 was passed, and he was adjudged a bankrupt, and discharged thereunder. *Held*, that such discharge in bankruptcy did not defeat the right of the trustee in insolvency to property acquired thereafter by the debtor by inheritance.—*Lavender v. Gosnell*, 43 Md. 153. [*Cited and annotated in 45 L. R. A. 188, on relation of bankrupt law to insolvent proceedings under state laws.*]

(c) [1869] A discharge, under an insolvent law of Maryland, from a debt due on an open account between citizens of that state is a good defense to an action on the account between the original parties, though the federal bankrupt act of March 2, 1867, was in operation when the debtor filed his petition for the benefit of the state insolvent law.—*Cassard v. Kroner*, 4 N. B. R. 569. (Decision of the Superior Court of Baltimore City—Reversed by the Supreme Bench of Baltimore City.)

(d) [1868] From the time when Congress acts upon the subject by a bankrupt law, all state laws become suspended, as far as all persons and cases within the purview of the national law are concerned.—*Van Nostrand*

*v. Carr*, 30 Md. 128. [*Cited and annotated in 45 L. R. A. 186, on relation of bankrupt law to insolvent proceedings under state laws.*]

(e) [1868] Though the bankrupt act of 1867 (section 33) provides that a debtor whose assets do not pay 50 per cent. of the claims is not entitled to a discharge, unless by consent of a majority of his creditors, the fact that a debtor makes affidavit that his assets will not pay that per cent., and that he thinks he cannot obtain the necessary consent of his creditors, does not take his case out of the operation of the bankrupt act, and authorize proceedings under the state insolvent law.—*Van Nostrand v. Carr*, 30 Md. 128. [*Cited and annotated in 45 L. R. A. 186, on relation of bankrupt law to insolvent proceedings under state laws.*]

(f) [1847] The bankrupt act of August 19, 1841, which expressly provided that it should take effect only from and after February 1, 1842, did not suspend the operation of the state insolvent laws until February 1, 1842.—*Larrabee v. Talbott*, 5 Gill 426, 46 Am. Dec. 637. [*Cited and annotated in 45 L. R. A. 187, on relation of bankrupt law to insolvent proceedings under state laws.*]

(g) [1802] The U. S. bankrupt act of 1800 (section 1) provides that any person being arrested for debt and remaining in prison two months or more shall be deemed and adjudged a bankrupt, provided that he should not be liable to a commission of bankruptcy if the petition be not preferred within six months after the act of bankruptcy was committed. Section 66 provides that if any person within the purview of the act be imprisoned for three months, unless his creditors shall prosecute bankruptcy proceedings agreeably to the provisions of the act, such debtor may have relief under the state insolvency laws. *Held*, that such person could, after three months imprisonment, apply for the benefit of the state insolvent act, subject to have his application superseded by bankruptcy proceedings against him within six months after the act of bankruptcy was committed.—*Clarke v. Ray*, 1 H. & J. 318. [*Cited and annotated in 45 L. R. A. 189, on relation of bankrupt law to insolvent proceedings under state laws.*]

## § 10. Foreign bankrupt laws.

### *Cross-Reference.*

Property passing to assignee, see post, § 141.

(a) [1799] The English bankrupt acts did not extend to the province of Maryland, nor operate on the property held there by the bankrupt.—Ward v. Morris, 4 H. & McH. 330.

## II. PETITION, ADJUDICATION, WARRANT, AND CUSTODY OF PROPERTY.

### (A) JURISDICTION AND COURSE OF PROCEDURE IN GENERAL.

#### *Cross-References.*

Jurisdiction of actions by or against trustees, see post, §§ 292-296.

Jurisdiction of claims to exempt property, see post, §§ 395-400.

Jurisdiction of proceedings to enforce rights or liens against property, see post, §§ 210-217.

Jurisdiction to order examination of bankrupt or others, see post, §§ 235, 237.

Jurisdiction to review proceedings, see post, §§ 439-468.

Situation of property, see post, § 141.

Want of jurisdiction as ground for collateral attack on discharge, see post, § 419.

Want of jurisdiction as ground for refusal of discharge, see post, § 407.

Power to re-examine fact tried by jury, see "Jury," § 37.

## § 11. Jurisdiction of courts of bankruptcy in general.

#### *Cross-References.*

Actions on trustees' bonds, see post, § 373.

Compelling surrender or transfer of property by bankrupt to trustee, see post, § 136.

Examination of bankrupt or others, see post, §§ 234-243.

In actions by or against trustees, see post, §§ 292-296.

Proceedings to reopen estate, see post, § 372.

Rules, forms, and orders as to procedure, see post, § 22.

Terms of court, see post, § 36.

Vacating adjudication, see post, § 51.

Vacating discharge, see post, § 417.

#### *Annotation.*

Question relating to bankruptcy as federal question.—62 L. R. A. 535.

Is state court's jurisdiction of creditor's attack on preference ousted by bankruptcy proceedings commenced more than four months after preference.—28 L. R. A. (N. S.) 363, notes.

(a) [1872] The jurisdiction of federal courts in bankruptcy is exclusive in all mat-

ters arising under the bankruptcy act of 1867.—Newman v. Fisher, 37 Md. 259.

(b) [1868] Under § 33 of the bankrupt act of 1867, providing that a debtor whose assets do not pay 50 per cent. of the claims against his estate is not entitled to be discharged unless by assent of a majority in number and value of his creditors who have proved their claims, the jurisdiction of the bankrupt court does not depend upon the right of the party ultimately to obtain his discharge.—Van Nostrand v. Carr, 30 Md. 128.

## §§ 12-16. Persons subject to jurisdiction.

#### *Cross-References.*

Capacity to commit acts of bankruptcy, see post, § 56.

Infancy or insanity of partner as affecting adjudication against firm, see post, § 69.

Insanity as ground for refusal of discharge, see post, § 407.

Persons who may be adjudged involuntary bankrupts, see post, §§ 67-74.

Dismissal of voluntary proceedings for want of jurisdiction, see post, § 48.

Estoppel to deny residence, see post, § 21.

Nonresidence as ground for refusal of discharge, see post, § 407.

Proof and adjudication on issue of residence in voluntary proceedings, see post, § 51.

Partners as involuntary bankrupts, see post, § 69.

Partners as voluntary bankrupts, see post, § 42.

Right to discharge, see post, § 404.

Corporations as involuntary bankrupts, see post, §§ 71-73.

Corporations as voluntary bankrupts, see post, § 43.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 17. Process or notice necessary to jurisdiction.

#### *Cross-References.*

Notice of application for discharge, see post, § 412.

Notice of taxation of costs, see post, § 477.

Notice to creditors in involuntary proceedings, see post, § 87.

Notice to nonjoining or opposing partners in voluntary proceedings, see post, § 46.

Service of petition and process in involuntary proceedings, see post, § 86.

## § 18. Conflicting jurisdiction of courts of bankruptcy.

#### *Cross-Reference.*

See post, §§ 48, 465.

### § 19. Transfer and consolidation of cases in different courts.

#### *Cross-References.*

Incompetency of clerk as ground for transfer, see post, § 85.  
Priority and consolidation of petitions in same court, see post, § 96.

### § 20. Conflicting jurisdiction of courts of bankruptcy and state courts.

#### *Cross-References.*

See ante, § 11.  
Actions by or against trustee, see post, § 296.  
Effect of bankruptcy acts on proceedings in state courts, see ante, § 9.  
Effect of prior adjudication by state court on right to exemption, see post, § 396.  
Effect of proceedings in state courts to avoid preferences, see post, § 191.  
Enforcement of obligations containing waiver of exemptions, see post, § 399.  
In proceedings to establish or enforce rights or liens against bankrupt's property, see post, § 211.  
Power to restrain or stay proceedings against bankrupt in state court, see post, § 391.  
Proceedings under state insolvency laws as acts of bankruptcy, see post, § 60.  
Restraining interference by third persons with property of bankrupt, see post, § 105.  
Rights of trustee as to pending actions, see post, § 156.  
Title of receiver in supplemental proceedings as against trustee, see post, § 196.  
Title of trustee to property in custody of state courts, see post, § 144.  
Action by trustee on contract of receiver, see post, § 278.  
Costs as claim against bankrupt's estate, see post, § 317.

### § 21. Objections to jurisdiction.

#### *Cross-References.*

Actions by or against trustee, see post, §§ 292-296.  
Estoppel to contest petition, see post, § 100.  
Objections in state court, see ante, § 20.  
Objections to parties, see post, § 88.  
Objections to petitioning creditors, see post, § 76.  
Objections to petition in involuntary proceedings, see post, §§ 81-86.  
Right to make objections after adjudication on voluntary petition, see post, § 51.  
Want of jurisdiction as ground for refusal of discharge, see post, § 407.

### § 22. Rules, forms, and orders as to procedure.

#### *Cross-References.*

Jurisdiction of courts of bankruptcy in general, see ante, § 11.  
Petition in involuntary proceedings, see post, §§ 81-84.

### § 23. Commencement of proceedings.

#### *Cross-Reference.*

As determining priority of jurisdiction, see ante, § 18.

### § 24. Representation by attorneys, and appearance.

#### *Cross-References.*

Appearance as waiver of objections to jurisdiction, see ante, § 21.  
Appearance by creditors opposing discharge, see post, § 413.  
Appearance in actions by or against trustee, see post, § 300.  
Attorney's knowledge of preference imputable to creditor, see post, § 166.  
Authority to take verification of petition in involuntary proceedings, see post, § 82.  
Authority to take verification of petition in voluntary proceedings, see post, § 44.  
Effect of attorney's acceptance of office of trustee, see post, § 118.  
Employment of counsel by trustee, see post, § 272.  
Filing of creditor's claim by bankrupt's attorney, see post, § 343.  
Validity and effect of adjudication entered on default, see post, § 100.  
Voting for trustee, see post, § 123.

### § 25. Disability or death of debtor before adjudication.

#### *Cross-Reference.*

Right to discharge, see post, §§ 401-403.

### §§ 27-32. Schedules.

#### *Cross-References.*

As admissions in general, see "Evidence," § 232.  
As evidence of insolvency in actions by or against bankrupt, see post, § 303.  
Discharge of debts not duly scheduled, see post, § 425.  
Filing schedules in voluntary proceedings, see post, § 45.  
Of property claimed as exempt, see post, § 400.  
Omissions from or inaccuracies in schedule as ground for refusal of discharge, see post, § 408.  
Omissions from schedule as ground for vacating discharge, see post, § 417.  
Property vesting in trustee, see post, §§ 138-149.  
Power of referee to order amendment of petition and schedule in involuntary proceedings, see post, § 44.

### § 33. Oaths and affirmations.

#### *Cross-Reference.*

Verification of petition, see post, §§ 44, 82.

### § 34. Depositions.

#### *Cross-Reference.*

Examination of bankrupt or others, see post, §§ 234-243.

**§ 35. Notices.***Cross-References.*

Process or notice necessary to jurisdiction, see ante, § 17.  
To creditors in involuntary proceedings, see post, § 87.

**§ 36. Motions and orders.***Cross-References.*

Order of reference on petition, see post, §§ 95-97.  
Vacation of adjudication in voluntary proceedings, see post, § 51.  
Power to punish assault on trustee as contempt, see "Contempt," § 53.

**§ 37. Records.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**(B) VOLUNTARY PROCEEDINGS.***Cross-References.*

Effect of bankruptcy acts on state insolvency laws and proceedings, see ante, § 9.  
Payment of costs incurred by trustee as condition precedent to dismissal of proceedings, see post, § 272.

**§ 38. Nature of proceeding.****§ 39. Successive proceedings.***Cross-References.*

Dismissal, see post, § 50.  
Effect of prior proceedings on right to discharge, see post, § 404.  
Persons entitled to join in second petition in involuntary proceedings, see post, § 76.

**§§ 40-43. Persons who may become voluntary bankrupts—partners, corporations.***Cross-References.*

Effect of infancy or insanity of debtor, see ante, § 13.  
Persons subject to jurisdiction, see ante, §§ 13, 15, 16.  
Effect of bankruptcy acts on state insolvency laws and proceedings, see ante, § 9.  
Involuntary proceedings, see post, §§ 69, 71-73.

**§ 44. Petition.***Cross-References.*

For discharge, see post, §§ 410, 411.  
Involuntary proceedings, see post, §§ 81-84.  
Necessity of alleging act of bankruptcy, see post, § 46.  
Representation by attorneys and appearance, see ante, § 24.  
Vacating adjudication to permit amendment, see post, § 51.

**§ 45. Filing petition and schedules.***Cross-References.*

As compliance with statute requiring schedule of exempt property on claim against execution, see "Exemptions," § 123.  
Involuntary proceedings, see post, §§ 79, 85.  
Omissions from or inaccuracies in schedule as ground for refusal of discharge, see post, § 408.

**§ 46. Notice to and proceedings in opposition by nonjoining partners.***Cross-References.*

Debts and liabilities discharged, see post, § 429.  
Dissolution of liens by adjudication, see post, § 200.

**§ 47. Objections by creditors.***Cross-References.*

In involuntary proceedings, see post, § 65.  
Right to vacate adjudication, see post, § 51.

**§ 48. Dismissal before hearing.***Cross-References.*

Involuntary proceedings, see post, § 92.  
On hearing, see post, § 50.

**§ 49. Hearing or reference.***Cross-Reference.*

In involuntary proceedings, see post, §§ 95-97.

**§ 50. Dismissal or hearing.***Cross-References.*

Before hearing, see ante, § 48.  
Involuntary proceedings, see post, § 99.

**§ 51. Adjudication.***Cross-References.*

Involuntary proceedings, see post, § 100.  
Validity of adjudication as dependent on appearance by qualified attorneys, see ante, § 24.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**(C) INVOLUNTARY PROCEEDINGS.***Cross-References.*

Commencement of proceedings, see ante, § 23.  
Effect of bankruptcy acts on state insolvency laws and proceedings, see ante, § 9.  
As waiver of garnishment proceeding, see "Garnishment," § 198.  
Malicious institution of proceedings, see "Malicious Prosecution," § 12.

**§ 52. Nature of proceeding.****§ 53. (Omitted from the classification used herein.)**

**§ 54. Insolvency of debtor.***Cross-References.*

Allegations in answer, see post, § 89.  
 Amount of indebtedness, see post, § 74.  
 As affecting dissolution of liens by adjudication, see post, § 199.  
 As element of acts of bankruptcy, see post, §§ 57-61.  
 As element of fraudulent transfer, see post, § 176.  
 As element of preference, see post, § 160.  
 Evidence, see post, § 91.  
 Examination of debtor as to solvency, see post, § 97.  
 Evidence of insolvency in actions by or against trustee, see post, § 303.  
 Right to trial by jury as to insolvency, see post, § 93.  
 Solvency as defense, see post, § 65.

**§ 55. Acts of bankruptcy.***Cross-References.*

Admissions in answer to petition, see post, § 89.  
 Allegations in petition, see post, § 81.  
 Evidence, see post, § 91.  
 Nature of act as affecting time for filing petition, see post, § 79.  
 Right to trial by jury as to acts of bankruptcy, see post, § 93.

**§ 56.— In general.**

(a) [1868] The application of a debtor for benefit of a state insolvency law is an act of bankruptcy within Bankrupt Act 1867, § 39.—*Van Nostrand v. Carr*, 30 Md. 128. [Cited and annotated in 45 L. R. A. 186, on relation of bankrupt law to insolvent proceedings under state laws.]

(b) [1802] If a debtor, who comes within the purview of the United States bankrupt act of 1800, is imprisoned for debt or upon contract for three months, in such case the act of bankruptcy being committed at the end of two months' imprisonment, the creditors have only one month allowed them to prefer a petition after such act of bankruptcy committed, and if they omit to prefer one within that time, the said act ceases to operate on the case of the debtor from the expiration of the three months, and he may avail himself of the state acts of insolvency; and his right of relief, under the insolvent acts of his own state, having attached according to the law of the United States, no subsequent act of the creditors can defeat or divest such right.—*Clarke v. Ray*, 1 H. & J. 318. [Cited and annotated in 45 L. R. A. 189, on relation of bankrupt

law to insolvent proceedings under state laws.]

**§ 57.— Fraudulent disposition of property.***Cross-Reference.*

Preferences by transfer of insolvent, see post, § 58.

**§ 58.— Preference by transfer by insolvent.***Cross-References.*

Allegations in petition, see post, § 81.  
 Evidence, see post, § 91.  
 Fraudulent disposition of property, see ante, § 57.  
 What constitutes insolvency, see ante, § 54.

(a) [1876] The transfer, by an insolvent, of real estate without consideration, constitutes an act of bankruptcy.—*Ecker v. Bohn*, 45 Md. 278.

**§ 59.— Preference through legal proceedings against insolvent.***Cross-References.*

Allegations in petition, see post, § 81.  
 Evidence, see post, § 91.

**§ 60.— Assignment for benefit of creditors, trust or receivership.***Cross-References.*

Acts by firm or individual partners, see post, § 62.  
 As affecting priority of jurisdiction of courts, see ante, § 20.  
 As fraudulent disposition of property, see ante, § 57.  
 Effect of bankruptcy acts on state insolvency laws and proceedings, see ante, § 9.  
 Effect of bankruptcy proceedings on jurisdiction of state courts, see ante, § 20.  
 Evidence, see post, § 91.  
 Validity of assignment as against trustee in bankruptcy, see post, § 178.  
 What constitutes acts of corporation, see post, § 63.  
 What constitutes acts of partnership, see post, § 62.

**§ 61.— Admission by debtor.***Cross-References.*

Authority and functions of corporate officers, see post, § 63.  
 In answer to petition, see post, § 89.

**§ 62.— Partners.***Cross-References.*

Assignment for benefit of creditors or appointment of receiver or trustee, see ante, § 60.  
 Fraudulent disposition of property, see ante, § 57.  
 Persons who may be adjudged bankrupt, see post, § 69.

Preference by transfer, see ante, § 58.  
 Preferences of partnership or individual creditors, see post, § 167.  
 Preference through legal proceedings, see ante, § 59.  
 Sufficiency of admission, see ante, § 61.  
 What constitutes insolvency. see ante, § 54.

### § 63.—Corporations.

#### *Cross-References.*

Assignment for benefit of creditors or appointment of receiver or trustee, see ante, § 60.  
 Fraudulent disposition of property, see ante, § 57.  
 Jurisdiction, see ante, § 16.  
 Preference by transfer, see ante, § 58.  
 Preference through legal proceedings, see ante, § 59.  
 Sufficiency of admission, see ante, § 61.

### 64.—Estoppel of creditors.

#### *Cross-References.*

Estoppel or forfeiture of right to maintain or join in petition, see post, § 76.  
 No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 65. Defenses and grounds for opposition.

#### *Cross-References.*

Grounds for refusal of discharge, see post, §§ 407-409.  
 Infancy or insanity of debtor, see ante, § 13.  
 Solvency as defense to petition based on the making of assignment or admission, see ante, §§ 60, 61.  
 To voluntary proceedings, see ante, § 47.

### § 66. Persons who may be adjudged bankrupt.

#### § 67.—In general.

#### *Cross-References.*

Acts of bankruptcy, see ante, §§ 56-64.  
 Effect of proceedings in state courts, see ante, § 20.  
 Evidence, see post, § 91.  
 Insolvency, see ante, § 54.  
 Persons subject to jurisdiction, see ante, § 13.  
 Voluntary proceedings, see ante, § 41.

### § 68.—Occupation or business.

#### *Cross-Reference.*

Allegations in petition, see post, § 81.

#### *Annotation.*

Engaging in other business as affecting exemption of farmer from involuntary proceedings in bankruptcy.—20 L. R. A. (N. S.) 148, note.

### § 69.—Partners.

#### *Cross-References.*

Acts of bankruptcy, see ante, § 62.  
 Amount of indebtedness, see post, § 74.

Banks and bankers, see post, § 73.  
 Evidence of existence of relation, see post, § 91.  
 Insolvency, see ante, § 54.  
 Jurisdiction, see ante, § 15.  
 Jurisdiction as affected by proceedings in state courts, see ante, § 20.  
 Nature of proceeding, see ante, § 52.  
 Service of subpoena on partners, see post, § 86.  
 Unincorporated companies, see post, § 70.  
 Voluntary proceedings, see ante, § 42.

#### *Annotation.*

Effect of adjudication of bankruptcy of partnership to subject the separate estates of the partners to administration in bankruptcy.—5 L. R. A. (N. S.) 654, note.

### § 70.—Unincorporated companies.

### § 71.—Corporation in general.

#### *Cross-References.*

Effect of bankruptcy acts on state insolvency laws and proceedings, see ante, § 9.  
 Insolvency, see ante, § 54.  
 Jurisdiction as affected by proceedings in state courts, see ante, § 20.  
 Jurisdiction as dependent on place of business or domicile, see ante, § 16.  
 Voluntary proceedings, see ante, § 43.

### § 72.—Nature of corporate business.

#### *Cross-References.*

Allegations in petition, see post, § 81.  
 Evidence, see post, § 91.  
 Findings, see post, § 95.  
 Jurisdiction as dependent on place of business or domicile, see ante, § 16.

#### *Annotation.*

Involuntary proceedings against public service corporations.—33 L. R. A. (N. S.) 454, note.

(a) [1907] Bankr. Act July 1, 1898, c. 541, § 4, subd. b, 30 Stat. 547 (U. S. Comp. St. 1901, p. 3423), as amended by act Feb. 5, 1903, c. 487, § 3, 32 Stat. 797 (U. S. Comp. St. Supp. 1905, p. 683), provides that any corporation engaged principally in manufacturing, trading, printing, publishing, mining, or mercantile business shall be subject to involuntary bankruptcy proceedings, and the section further provides that private banks, but not national banks or banks incorporated under state laws, may be adjudged involuntary bankrupts. Code 1904, art. 23, § 376, provides that, whenever any corporation shall have been determined by legal proceedings to be insolvent, it shall be deemed to have surrendered its corporate rights and franchises, and may be adjudged to be dissolved on bill filed for that purpose.

Section 377 provides that whenever any corporation mentioned in § 376 shall have been determined to be insolvent, all payments, etc., which would be void if made by an individual person shall, to like extent, be void when made by the corporation, and that, when the corporation shall have been adjudged dissolved, all its property shall be distributed to creditors in the same manner as that of an insolvent person. *Held*, that the bankruptcy act had no application to a corporation whose charter authorized it to deal in notes, loans, and bonds, and, if it had, it did not take away any jurisdiction of the state courts to appoint receivers to take charge of the assets of such a corporation when insolvent, especially where no proceedings in bankruptcy had been commenced against the corporation.—*Murphy v. Penniman*, 105 Md. 452, 66 Atl. 282; *Thomas v. Same*, *Id.* (For present Maryland statute, see Code 1911, art. 23, §§ 78, 79.)

**§ 73.—Banks and bankers.**

**§ 74.—Amount of indebtedness.**

**§§ 75-77. Petitioning creditors.**

*Cross-References.*

Effect of infancy or insanity of debtor, see ante, § 13.

Claims provable against estate of bankrupt, see post, §§ 314-320.

Estoppel to deny insolvency, see ante, § 64.

Answer setting up deficiency as defense, see post, § 89.

Dismissal or withdrawal of petitioners, see post, § 92.

Effect of intervention, see post, § 88.

Objections in state court, see ante, § 20.

**§ 78. Creditors entitled to oppose petition.**

*Cross-References.*

Estoppel, see ante, § 64.

Intervention to oppose petition, see post, § 88.

To oppose discharge, see post, § 405.

**§ 79. Time for filing petition.**

*Cross-References.*

See ante, § 6.

As dependent on time law takes effect, see ante, § 5.

Effect of appeal from order refusing discharge, see post, § 462.

Petition for discharge, see post, § 410.

Petition for reinstatement of case after dismissal, see post, § 92.

Petition for reinstatement of case after dismissal on hearing, see post, § 99.

Time for intervention or joinder in petition, see post, § 88.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§§ 80-84. Petition.**

*Cross-References.*

Application for warrant for seizure of property, see post, § 106.

Time for filing, see ante, § 79.

As to petitioning creditors, see ante, §§ 76, 77.

Ground for collateral attack on adjudication, see post, § 100.

Necessity of showing insolvency of debtor making assignment or admission, see ante, §§ 60, 61.

Voluntary proceedings, see ante, § 44.

As affecting time of vesting of title in trustee, see post, § 152.

Intervention, see post, § 88.

In voluntary proceedings, see ante, § 51.

**§ 85. Filing and presentation of petition.**

*Cross-References.*

As affecting time of passing of title to trustee, see post, § 152.

Docket entries and records, see ante, § 37.

Effect as attachment or injunction, see post, § 101.

Jurisdiction acquired by filing and service, see ante, § 17.

Time for filing, see ante, § 79.

**§ 86. Service of petition and process.**

*Cross-References.*

See post, § 88.

Commencement of proceedings, see ante, § 23.

Process or notice necessary to jurisdiction, see ante, § 17.

**§ 87. Notice to creditors.**

*Cross-References.*

Notice of dismissal, see post, § 92.

Notice of dismissal on hearing, see post, § 99.

Of withdrawal of debtor's opposition, see post, § 89.

**§ 88. Parties.**

*Cross-References.*

See post, § 105.

Creditors entitled to oppose petition, see ante, § 78.

Dismissal for want of sufficient petitioners, see post, § 92.

Parties concluded by adjudication, see post, § 100.

Petitioning creditors, see ante, §§ 76, 77.

Demurrer as mode presenting objections, see post, § 89.

Reinstatement of case after dismissal before hearing, see post, § 92.

Reinstatement of case after dismissal on hearing, see post, § 99.



(a) [1880] A creditor who has received from the debtor an assignment and bill of sale of his property, with knowledge or reasonable cause to believe that the debtor was at that time insolvent, has no legal right to institute subsequent proceedings in bankruptcy against the debtor.—*Ecker v. McAllister*, 54 Md. 362.

(b) [1876] U. S. Bankrupt Act 1867, § 23, provides that no one receiving a preference under the circumstances mentioned in the act shall prove his claim until he shall have surrendered to the assignee all the property received. The act also provides that none but a creditor having a claim provable in bankruptcy at the time the petition is filed could institute bankruptcy proceedings against his debtor. *Held*, that a creditor receiving a fraudulent preference could not, whether he surrendered his property or not, petition in bankruptcy against his debtor.—*Ecker v. McAllister*, 45 Md. 290.

### § 89. Answer and other pleadings.

#### *Cross-References.*

- Hearing on petition and answer, see post, § 95.
- Intervention to oppose petition, see ante, § 88.
- Mode of challenging authority of attorney appearing for petitioners, see ante, § 24.
- Conclusiveness of answer on motion to dismiss, see post, § 92.

### § 90. Issues, proof, and variance.

### § 91. Evidence.

### § 92. Dismissal before hearing.

#### *Cross-References.*

- Dismissal on hearing, see post, § 99.
- Effect of disability or death of debtor, see ante, § 25.
- Voluntary proceedings, see ante, § 48.

### § 93. Right to jury trial.

#### *Cross-References.*

- Right of partner opposing adjudication on petition filed by partner, see ante, § 46.
- In actions by trustee, see "Jury," § 14.

### §§ 94-97. Trial, hearing, or reference.

#### *Cross-References.*

- Rehearing to revive right of appeal, see post, § 461.
- Voluntary proceedings, see ante, § 49.
- As to procedure before referees in general, see post, § 225.
- Cases in different courts, see ante, § 19.

Conflicting jurisdiction of courts of bankruptcy, see ante, § 18.

Examination of bankrupt or others after adjudication as to property, see post, §§ 234-243.

Failure to submit to examination as affecting burden of proving solvency, see ante, § 91.

### § 98. Review of referee's proceedings by judge.

#### *Cross-References.*

- Procedure in general, see post, § 228.
- Review of judge's decision, see post, §§ 439-468.

### § 99. Dismissal on hearing.

#### *Cross-References.*

- Costs, see post, §§ 469-484.
- Dismissal as to insane or infant partner, see ante, § 69.
- Dismissal before hearing, see ante, § 92.
- Voluntary proceedings, see ante, § 50.

### § 100. Adjudication.

#### *Cross-References.*

- See ante, § 52; post, § 210.
- Appeal or revision, see post, §§ 439-468.
- Effect as dissolving liens, see post, §§ 198-203.
- Effect as terminating contracts, see post, § 318.
- Effect on rights and remedies of parties claiming liens, see post, §§ 210-217.
- Petition for second adjudication, see ante, § 76.
- Pleading adjudication, see post, § 302.
- Voluntary proceedings, see ante, § 51.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 100(a). Agreement to forbear prosecution, or to withdraw opposition.

#### *Cross-References.*

- See 6 Cent. Dig. Bankruptcy, § 147.
- Agreement to withdraw opposition to discharge, see post, § 415.

(a) [1876] An agreement by a third person to pay another's debt in consideration of the creditor's promise to forbear to institute bankruptcy proceedings against the debtor is not in violation of any provision of Bankrupt Act 1867, or of public policy.—*Ecker v. Bohn*, 45 Md. 278; *Same v. McAllister*, Id. 290.

### (D) WARRANT AND CUSTODY OF PROPERTY.

#### *Cross-References.*

- Claims to exempt property, see post, §§ 395-400.
- Costs and fees, see post, §§ 469-484.

**§ 101. Possession and control pending proceedings in general.**

*Cross-Reference.*

Effect of adjudication and appointment of trustee, see post, § 135.

**§ 102. Restraining transfer or disposition by debtor.**

*Cross-References.*

Interference by third persons, see post, §§ 104, 105.

Jurisdiction to issue writ of ne exeat, see post, § 237.

**§§ 103-105. Restraining interference by third persons.**

*Cross-References.*

Injunction in suits by or against trustee, see post, § 301.

Conflicting jurisdiction of courts of bankruptcy and state courts, see ante, § 20.

Knowledge or notice of injunctive order as affecting liability for contempt, see "Injunction," § 221.

Threat to levy as contempt, see "Contempt," § 18.

**§§ 106-113. Warrant and seizure pending proceedings.**

*Cross-Reference.*

Claims by third persons, see post, § 116.

**§ 114. Appointment and authority of receiver or marshal pending proceedings.**

*Cross-References.*

Fees or compensation of marshals and receivers, see post, § 484.

Power of referees to make appointment, see post, § 224.

Appointment of receiver as taking property without due process of law, see "Constitutional Law," §§ 278, 312.

**§ 115. Actions by or against receiver.**

*Cross-References.*

Restraining interference by third person, see ante, § 104.

Restraining proceedings in state courts against receiver, see ante, § 105.

Security for costs, see post, § 475.

Interpleader, see "Interpleader," § 11.

**§ 116. Claims by third persons.**

*Cross-References.*

Conflicting jurisdiction of courts of bankruptcy and state courts, see ante, § 20.

Equities against trustee's title, see post, § 155.

Nature and form of remedy for recovery of property by trustee, see post, §§ 287, 288.

Liability of third person's property for expenses of unauthorized receivership, see "Receivers," § 200.

**§ 117. Sale or other disposition of property pending proceedings.**

*Cross-References.*

Sale by trustee, see post, §§ 257-270.

As affected by prior assignment of lease by bankrupt tenant, see "Landlord and Tenant," § 75.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**III. ASSIGNMENT, ADMINISTRATION, AND DISTRIBUTION OF BANKRUPT'S ESTATE.**

**(A) APPOINTMENT, QUALIFICATION, AND TENURE OF TRUSTEE.**

*Cross-References.*

Appointment on reopening estate, see post, § 372.

Effect of appointment and qualification on title and rights of trustee, see post, § 135.

Provisional receiver, see ante, § 114.

**§ 118. Office of trustee.**

**§ 119. Necessity for appointment.**

*Cross-References.*

Power to prescribe rules as to necessity for appointment, see ante, § 22.

Presumption as to appointment, see post, § 198.

**§ 120. Competency.**

**§§ 121-126. Election by creditors.**

*Cross-References.*

See post, §§ 311, 314.

As affected by form and sufficiency of proof of claim, see post, §§ 330-336.

At creditors' meetings, see post, § 231.

Acknowledgment to power of attorney to proxy of creditor, see "Acknowledgment," § 30.

As affected by composition proceedings, see post, § 375.

**§ 127. Appointment by referee or court.**

**§ 128. Notice of appointment.**

**§ 129. Bond.**

**§ 130. Failure to qualify or act.**

**§ 131. Resignation or disqualification.**

**§ 132. Removal.**

**§ 133. Death.**

*Cross-Reference.*

Representatives of deceased trustees, see post, § 276.

**§ 134. Appointment of successor or receiver.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

(B) ASSIGNMENT, AND TITLE,  
RIGHTS, AND REMEDIES OF  
TRUSTEES IN GENERAL.

*Cross-References.*

Actions by trustee, see post, §§ 277-306.  
Claims of third persons required to surrender bankrupt's property to provisional receiver or marshal, see ante, § 116.  
Presumption as to taking possession of property by trustee, see "Evidence," § 83.

§ 135. Effect of appointment and qualification.

*Cross-Reference.*

Time of vesting of title or right, see post, § 152.

§ 136. Transfers by bankrupt to trustee under order of court.

*Cross-References.*

Appeal and revision of proceedings, see post, §§ 439-468.  
Compelling surrender of property to provisional receiver, see ante, § 114.  
Compelling third person to surrender property to marshal or provisional receiver, see ante, § 116.  
Concealment of assets as ground for reopening estate, see post, § 372.  
Jurisdiction and powers of referees in general, see post, § 224.  
Power of referee to commit for contempt, see post, § 229.  
Review of proceedings before referee by judge, see post, § 228.  
Rights of trustee as to transfers, see post, § 185.  
Summary proceedings against adverse claimants for recovery of property, see post, § 288.  
Enforcement of order by imprisonment as constituting imprisonment for debt, see "Constitutional Law," § 83.  
Use of testimony taken on examination of bankrupt or others, see post, § 243.

(a) [1872] The provision in § 14 of the act of 1867, that the judge shall convey and assign the bankrupt's property to the assignee, "by an instrument under his hand," is merely directory. Therefore the signature of the judge is not essential to the validity of the conveyance, etc., when some equally formal mode has been adopted, sanctioned by the seal of the court, which imports verity and gives authenticity to all the judicial acts of the judge.—Zantzinger v. Ribble, 36 Md. 32.

§ 137. Property and rights vesting in trustee.

*Cross-References.*

Concealment of assets by bankrupt as

ground for refusal of discharge, see post, § 408.

Examination of bankrupt or others as to property, see post, §§ 234-243.

Exempt property, see post, §§ 395-400.

Rights of purchasers at trustee's sale, see post, § 268.

Sale by trustee, see post, §§ 257-270.

§ 138.—Personal property in general.

*Cross-References.*

Crops, see post, § 143.  
Licenses, see post, § 143.  
Ownership or possession of property, see post, § 140.  
Property capable of transfer or subject to process, see post, § 143.  
Title acquired by trustee, see post, § 151.

§ 138(a).—Judgments.

*Cross-Reference.*

See 6 Cent. Dig. Bankruptcy, § 209.

(a) [1872] D. recovered judgment against Z. in an action on a promissory note, but, by some inadvertence, judgment was entered for less than the amount recovered. Three years afterwards the original judgment was amended, by order of court, so as to cover the amount recovered. In the meantime D. had been declared a bankrupt. In an action on the judgment by D.'s assignee in bankruptcy against Z., held, that the cause of action and original judgment, being antecedent to the application and assignment in bankruptcy, passed by operation of law to the assignee, subject to all the rights of the bankrupt to have the judgment amended.—Zantzinger v. Ribble, 36 Md. 32.

§ 139.—Real property and interests therein.

*Cross-References.*

Dower, see post, § 143.  
Estate in wife's land, see post, § 143.  
Ownership or possession, see post, § 140.

§ 140.—Ownership or possession of property.

*Cross-References.*

See post, § 210.  
Actions by or against trustee relating to property, see post, §§ 277-306.  
As affecting validity of preferences, see post, § 165.  
Equities of third persons, see post, § 155.  
Estate in wife's land, see post, § 143.  
Interest as heir or devisee, see post, § 143.  
Mortgaged property, see post, § 143.  
Property in custody of law, see post, § 144.

Property of wife or children of bankrupt, see post, § 143.

Real property in general, see ante, § 139.

Transfers by debtor prior to bankruptcy proceedings, see post, §§ 172, 173.

Effect of failure to record contract of sale, see post, § 184.

Real property and interests therein, see ante, § 139.

Transfers void under state laws, see post, § 184.

Validity of vendor's lien or title, see post, § 188.

Priority of principal's claim, see post, § 345.

Property held in trust for bankrupt, see post, § 143.

Right of principal to lien, see post, § 188.

(a) [1872] D. recovered judgment against Z. in an action on a promissory note, but, by some inadvertence, judgment was entered for less than the amount recovered. Three years afterwards the original judgment was amended, by order of court, so as to cover the amount recovered. In the meantime D. had been declared a bankrupt. In an action on the judgment by D.'s assignee in bankruptcy against Z., *held*, that the cause of action and original judgment, being antecedent to the application and assignment in bankruptcy, passed by operation of law to the assignee, subject to all the rights of the bankrupt to have the judgment amended.—*Zantzinger v. Ribble*, 36 Md. 32.

#### § 141.— Situation of property.

##### *Cross-Reference.*

Effect of foreign bankruptcy laws, see ante, § 10.

(a) [1766] [1790] An assignment by commissioners of bankrupt in England does not operate as a legal or equitable transfer of property in this country, so as to prevent an American creditor from resorting to that property for payment, or the bankrupt from transferring it.—*Burke v. McLain*, 1 H. & McH. 236; *Wallace v. Patterson*, 2 H. & McH. 463. [Cited and annotated in 23 L. R. A. 43, on transfer of property out of state by bankruptcy or kindred proceedings.]

#### § 142.— Property fraudulently conveyed.

##### *Cross-References.*

Conveyance to bankrupt, see post, § 151.

Fraudulent transfers, see post, §§ 175-182.

Right of trustee to avoid transfers, see post, § 185.

#### § 143.— Property capable of transfer or subject to process.

##### *Cross-References.*

Assignability of rights of action, see post, § 145.

Effect of failure to record transfers by debtor prior to bankruptcy proceedings, see post, § 184.

Property acquired by fraud, see ante, § 140.

Property to be included in schedule, see ante, § 30.

Transfers by debtor prior to bankruptcy proceedings, see post, §§ 172, 173.

Crops as exempt property, see post, § 396.

Right of debtor to compensation for care of crops, see ante, § 136.

Application of proceeds on sale of license incumbered by mortgage or lien, see post, § 267.

Exemptions, see post, § 396.

Transfers by bankrupt to trustee under order of court, see ante, § 136.

Right of trustee of bankrupt mortgagor to compel assignment of mortgage, see post, § 207.

Right of trustee to redeem, see post, § 253.

After acquired property, see post, § 148.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 144.— Property in custody of the law.

##### *Cross-References.*

Conflicting jurisdiction of courts of bankruptcy and state courts in general, see ante, § 20.

Conflicting jurisdiction of courts of bankruptcy and state courts in proceedings to enforce rights or liens against bankrupt's property, see post, § 211.

Effect of bankruptcy acts on state insolvency laws and proceedings, see ante, § 9.

Ownership or possession in general, see ante, § 140.

Costs incurred before filing petition as provable claims against bankrupt's estate, see post, § 317.

Proceedings by trustee to obtain possession of property, see post, §§ 277-306.

#### § 145.— Rights of action.

##### *Cross-References.*

Actions by trustee in behalf of estate, see post, §§ 277-306.

Insurance on life of debtor, see ante, § 143.

Insurance policies in general, see ante, § 143.

Right of bankrupt to sue, see post, § 390.

Rights as to pending actions, see post, § 156.

Assignment of mechanic's lien by bankrupt to trustee, see "Mechanics' Liens," § 202.

Assessments on stock, see post, § 250.

Recovery of usury by bankrupt after discharge, see post, § 438.  
 Usury as defense to claim against bankrupt's estate, see post, § 339.

**§ 146.—Property omitted from schedule.**

*Cross-References.*

Property to be included in schedule, see ante, § 30.  
 Reversion of property not scheduled, see post, § 438.

**§ 147.—Exempt property.**

**§ 148.—After-acquired property.**

(a) [1872] D. recovered judgment against Z. in an action on a promissory note, but, by some inadvertence, judgment was entered for less than the amount recovered. Three years afterwards the original judgment was amended, by order of court, so as to cover the amount recovered. In the meantime D. had been declared a bankrupt. In an action on the judgment by D.'s assignee in bankruptcy against Z., *held*, that the cause of action and original judgment, being antecedent to the application and assignment in bankruptcy, passed by operation of law to the assignee, subject to all the rights of the bankrupt to have the judgment amended.—*Zantzing v. Ribble*, 36 Md. 32.

**§ 149.—Partnership and individual property.**

*Cross-References.*

See post, § 299.  
 Distribution of assets, see post, § 354.  
 Estoppel to deny partnership, see post, § 151.  
 Exemptions in partnership and individual property, see post, § 397.  
 Preferences of partnership or individual creditors, see post, § 167.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 150.—Failure to take possession, or abandonment of property by trustee.**

*Annotation.*

Liability for failure to collect assets.—16 L. R. A. (N. S.) 341, note.

**§ 151.—Title acquired by trustee in general.**

*Cross-References.*

Dissolution of liens by adjudication, see post, §§ 198-208.  
 Right of bankrupt to maintain actions relating to property, see post, § 390.

Rights as to property affected by lien, see post, § 205.

Right to avoid transfers, see post, § 185.  
 Subrogation of trustee to rights under lien, see post, § 207.

Title to property acquired by bankrupt's fraud, see ante, § 140.

Transfers by debtor prior to bankruptcy, see post, §§ 172, 173.

Validity of liens as against trustee, see post, §§ 187-207.

**§ 152.—Time of vesting of title or right.**

**§ 153.—(Omitted from the classification used herein.)**

**§ 154.—Set-offs and counterclaims against trustee.**

*Cross-References.*

See ante, § 145.  
 Against claims of creditors, see post, § 326.  
 Deposit constituting trust as affecting bank's right to set-off, see post, § 303.  
 Deposits as constituting preference, see post, § 163.  
 Set-off as preference preventing allowance of claim, see post, § 311.  
 Set-off of amount of new credit by creditor preferred, see post, § 169.  
 Transfer of claims for purpose of giving right of set-off as unlawful preference, see post, § 159.

*Annotation.*

Right of creditor to set off new credits given after receiving a preference.—55 L. R. A. 344.

Set-off by bank against bankrupt's deposit as a preference within the bankruptcy law.—20 L. R. A. (N. S.) 863, notes.

**§ 155.—Equities of third persons.**

*Cross-References.*

Claims by third persons to property demanded by provisional receiver or marshal, see ante, § 116.

Equitable assignments or liens, see post, § 188.

Equitable lien for premiums paid on life policy, see ante, § 143.

Ownership or possession of property, see ante, § 140.

Transfers by debtor prior to bankruptcy, see post, §§ 172, 173.

**§ 156.—Rights as to pending actions.**

*Cross-References.*

See post, § 296.  
 Effect of bankruptcy on pending suits against bankrupt, see post, § 391.

Leave to sue, see post, § 285.

Pending suits to enforce liens, see post, §§ 209-218.

Right of bankrupt to sue, see post, § 390.

Subrogation of trustee to rights under lien, see post, § 207.

Evidence as to amount of landlord's lien, see "Landlord and Tenant," § 262.

(a) [1913] Under Bankr. Act July 1, 1898, § 70e, as amended by Act Feb. 5, 1903, § 16, authorizing the trustee in bankruptcy to sue in the state court to avoid a fraudulent conveyance, the trustee may prosecute a suit instituted by a creditor before the petition in bankruptcy was filed, or he may be joined as a party to that suit, and it may then proceed to final decree.—*Blick v. Nimmo*, 121 Md. 139, 88 Atl. 116.

(b) [1875] Where, pending a suit by the conventional trustee of a debtor under the state insolvency law to recover property of the debtor, the latter is adjudged a bankrupt, the assignee in bankruptcy can intervene in such action by supplemental bill, and need not file an original bill in the nature of a supplemental bill.—*Collateral Security Bank v. Fowler*, 42 Md. 393.

(c) [1874] Where, after judgment by confession in an action in a state court, and after the proceeds of sale of property under execution had been paid into court, the defendant was adjudged a bankrupt in the United States Court, the assignee may intervene to claim the proceeds on the ground that the judgment was fraudulent under the provisions of the bankruptcy law.—*Jordan v. Downey*, 40 Md. 401.

### § 157. Proceedings in state courts after adjudication.

#### *Cross-References.*

Conflicting jurisdiction of courts of bankruptcy and state courts in general, see ante, § 20.

Conflicting jurisdiction of courts of bankruptcy and state courts in proceedings to enforce rights or liens against bankrupt's property, see post, § 211.

Remedies to enforce rights or liens against bankrupt's property, see post, §§ 209-218.

Right to sue bankrupt, and effect of bankruptcy on pending suits, see post, § 391.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### (C) PREFERENCES AND TRANSFERS BY BANKRUPT, AND ATTACHMENTS AND OTHER LIENS.

#### *Cross-References.*

As acts of bankruptcy, see ante, §§ 57-60. Claims by third persons to property demanded by marshal or provisional receiver, see ante, § 116.

Effect of preference and surrender thereof on right to prove claims, see post, § 311.

Effect of preference on creditor's right to join in petition, see ante, § 76.

Fraudulent or preferential transfers as ground for refusal of discharge, see post, § 407.

Liabilities enforceable against, and transfers of property claimed as exempt, see post, § 398.

Operation and enforcement of obligations containing waiver of exemptions, see post, § 399.

Preferences, and fraudulent disposition of property as waiver or forfeiture of exemptions, see post, § 399.

Trustee's sale of property free from liens, see post, § 258.

### § 158. Preferences voidable.

#### *Cross-Reference.*

Bankruptcy act as impairing obligation of existing contracts, see "Constitutional Law," § 161.

### § 159.— In general.

#### *Cross-References.*

See ante, §§ 4, 363.

As affecting computation of indebtedness, see ante, § 74.

As ground for dissolution of lien by adjudication, see post, § 201.

Evidence as to preferences constituting acts of bankruptcy, see ante, § 91.

Fraudulent transfers, see post, §§ 175-182.

Liability of creditor for interest on property received, see post, § 250.

Mechanics' and laborers' liens, see post, § 192.

Preferences void under state law, see post, § 191.

Rights and liabilities of transferees in general, see post, § 186.

Set-off of amount of new credit by creditor preferred, see ante, § 169.

Transfers void under state laws, see post, § 184.

(a) [1876] Before proceedings in bankruptcy have been commenced, a creditor may take from a third person a contract, covenant, or security for the payment of money, as an inducement to forbear instituting proceedings in bankruptcy against his debtor, without violating any provision of the bankrupt act, or contravening public policy.—*Ecker v. Bohn*, 45 Md. 278; *Same v. McAlister*, Id. 290.

(b) [1810] Paying money or giving security to a creditor, in contemplation of bankruptcy, and with a view to prefer him, was valid, if it were not voluntary, but the effect

of measures taken by the creditor.—*McMechen v. Grundy*, 3 H. & J. 185. [*Cited and annotated* in 17 L. R. A. (N. S.) 942, on voidability of transfer within four months' period, pursuant to executory agreement antedating that period.]

### § 160.—Insolvency of debtor.

#### *Cross-References.*

As ground for dissolution of liens acquired by legal proceedings, see post, § 199.

As ground for involuntary proceedings, see ante, § 54.

Evidence in actions by or against trustee, see post, § 303.

Knowledge of insolvency, see post, § 166.

#### *Annotation.*

Validity of transfer to secure pre-existing debt within four months of bankruptcy, in absence of any intent on the part of the debtor to hinder, delay, or defraud creditors, or of reasonable cause on the part of the creditor to believe that it was a preference.—15 L. R. A. (N. S.) 372.

### § 161.—Time of giving preference.

#### *Cross-References.*

As affecting obligation to surrender preference before proving claim, see post, § 311.

Knowledge and intent of parties, see post, § 166.

Time of fraudulent transfer, see post, § 177.

#### *Annotation.*

Voidability of transfer within four months' period, pursuant to executory agreement antedating that period.—17 L. R. A. (N. S.) 935; 40 L. R. A. (N. S.) 639, notes.

(a) [1810] A. had engaged to transfer bank stock to B., to secure him from loss by indorsing A.'s notes. Not having the stock when applied to for the transfer, A., at B.'s instance, conveyed land to C., who took up the notes. *Held*, that, though A. had committed an act of bankruptcy before he conveyed the land, yet the conveyance was valid, and that B.'s preference, thus obtained, was only a substantial fulfillment of A.'s original engagement when B. indorsed the notes.—*McMechen v. Grundy*, 3 H. & J. 185. [*Cited and annotated* in 17 L. R. A. (N. S.) 942, on voidability of transfer within four months' period, pursuant to executory agreement antedating that period.]

### § 162.—Procuring or suffering judgment.

#### *Cross-Reference.*

Dissolution of liens acquired by legal proceedings, see post, §§ 198-203.

(a) [1875] Something more than passive nonresistance in an insolvent debtor is necessary to invalidate a judgment and levy on his property, when the debt is due, and he has no defense. In such case the debtor's failure to file a petition in bankruptcy to prevent a judgment and levy is not sufficient evidence of an intent to give a preference or to defeat the operation of the bankrupt law. And a lien thus obtained by the judgment creditor will not be displaced by subsequent proceedings in bankruptcy, commenced within four months after levy or rendition of judgment.—*Henkelman v. Smith*, 42 Md. 164.

(b) [1874] To affect a confession of judgment of a debt with fraud under act 1867, § 35, it must have been rendered within four months before the filing of the petition in bankruptcy, and it must appear that the debtor was at the time insolvent, or in contemplation of insolvency, that the judgment was confessed with a view to give a preference to the judgment creditor, and that the latter knew, or had reason to believe, that the transaction was in fraud of the statute.—*Jordan v. Downey*, 40 Md. 401. [*Cited and annotated* in 48 L. R. A. 36, on administration of federal laws in state courts.]

### § 163.—Transfers of property.

#### *Cross-References.*

As acts of bankruptcy, see ante, § 58.

Knowledge and intent of parties, see post, § 166.

Payment as transfer, see post, § 164.

Record as determining time of giving preference, see ante, § 161.

Transfers affecting creditor's right to prove claims, see post, § 311.

Transfers for legal services to be rendered, see post, § 170.

### § 164.—Payments by debtor.

#### *Cross-References.*

As acts of bankruptcy, see ante, § 58.

As affecting creditor's right to prove claim, see post, § 311.

As fraudulent transfers, see post, § 178. For legal services to be rendered, see post, § 170.

Knowledge and intent of parties, see post, § 166.

Ownership of money paid, see post, § 165.  
Set-off of amount of new credit by creditor preferred, see post, § 169.  
Time of payment, see ante, § 161.

### § 165.—Effect of transaction to give preference.

#### *Cross-References.*

As affecting allowance of claim, see post, § 311.  
Effect of prior agreement or promise to give security or to make transfer, see post, § 161.  
Enforcement of lien given by rules of stock exchange against property of bankrupt member, see post, § 214.  
Consideration for transfer by debtor, see post, § 181.

### § 166.—Knowledge and intent of parties.

#### *Cross-References.*

As affecting dissolution of liens acquired by legal proceedings, see post, § 203.  
As affecting obligation of creditor to surrender preference before proving his claim, see post, § 311.  
As element of act of bankruptcy, see ante, § 58.  
Bona fide purchasers, see post, § 182.  
Evidence, see post, § 303.  
Questions for jury, see post, § 304.  
Notice to officer imputable to bank, see "Banks and Banking," § 116.

#### *Annotation.*

Intent on part of bankrupt to create a preference as a condition of a voidable preference under § 60b.—33 L. R. A. (N. S.) 558, note.

### § 167. Preferences of partnership or individual creditors.

#### *Cross-References.*

Preference voidable in general, see ante, §§ 159-166.  
Transfers fraudulent as to partnership or individual creditors, see post, § 183.

#### *Annotation.*

Must individual partners, as well as firm, be insolvent, in order to render the firm bankrupt, or to avoid the payment of a firm debt as a preference.—21 L. R. A. (N. S.) 960, note.

### § 168. Rights of trustee as to preferences.

#### *Cross-References.*

See post, § 299.  
Actions to recover preferences, see post, §§ 277-306.  
Effect of allowance of claim of creditor preferred, see post, § 341.

### § 169. Set-off of amount of new credit by creditor preferred.

#### *Cross-Reference.*

Preference as set-off against creditor's claim against estate, see post, § 326.

### § 170. Payment or transfer for legal services to be rendered.

#### *Cross-References.*

Allowance of attorney's fees as costs, see post, § 482.  
Proceedings for re-examination of transaction, see post, § 235.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### §§ 171-173. Transfers in general.

#### *Cross-References.*

As acts of bankruptcy, see ante, § 57.  
As preferences, see ante, §§ 159-166.  
Equitable assignments, see post, § 188.  
Fraudulent transfers, see post, §§ 175-182.  
Liens in general, see post, § 188.  
Rights of purchasers or mortgagees of property claimed as exempt, see post, § 398.  
Title of trustee to mortgaged property in general, see ante, § 143.  
Transfers void under state laws, see post, § 184.  
Validity as affected by mode of execution of conveyance by corporation, see "Corporations," § 477.

### § 174. Fraudulent transfers.

#### *Cross-References.*

Action by trustee to set aside fraudulent transfer, see post, § 279.  
As to partnership or individual creditors, see post, § 183.  
Effect of discharge on pending suit to avoid transfer, see post, § 433.  
Preferences, see ante, §§ 159-166.  
Title of trustee to property fraudulently conveyed, see ante, § 142.  
Transfers void under state laws, see post, § 184.  
State laws as rules of decision in courts of bankruptcy, see "Courts," §§ 359, 372.  
Transfers in fraud of creditors in general, see "Fraudulent Conveyances," §§ 1-171.

### § 175.—In general.

### § 176.—Insolvency of debtor.

#### *Cross-References.*

As affecting bona fide purchasers, see post, § 182.  
Preferences by insolvent, see ante, § 160.

### § 177.—Time of making.

#### *Cross-References.*

See post, § 180.  
Rights of trustee as to pending suits to avoid transfers, see ante, § 156.  
Time of giving preferences, see ante, § 161.

(a) [1810] A. had engaged to transfer bank stock to B., to secure him from loss by indorsing A.'s notes. Not having the



stock when applied to for the transfer, A., at B.'s instance, conveyed land to C., who took up the notes. *Held*, that, though A. had committed an act of bankruptcy before he conveyed the land, yet the conveyance was valid, and that B.'s preference thus obtained, was only a substantial fulfillment of A.'s original engagement when B. endorsed the notes.—*McMechen v. Grundy*, 3 H. & J. 185. [*Cited and annotated in 17 L. R. A. (N. S.) 942, on voidability of transfer within four months' period, pursuant to executory agreement antedating that period.*]

### § 178.—Nature and form of transaction.

#### *Cross-References.*

See ante, § 144.  
Effect of sale by assignee for benefit of creditors, see ante, § 172.  
Liens in general, see post, §§ 188, 189.  
Organization of corporation as ground for surrender of property to receiver, see ante, § 116.  
Assignee's right to compensation for management of property after adjudication in bankruptcy, see post, § 249.  
Costs incurred in assignments for benefit of creditors as claims provable against bankrupt's estate, see post, § 317.  
Effect of bankruptcy acts on state insolvency laws and proceedings, see ante, § 9.  
Jurisdiction of proceedings affecting assignments, see post, § 293.  
(a) [1876] [1880] A transfer by one engaged in the milling business of all his book accounts, and a bill of sale of all his personal and real property, made within a few days after he had closed his business, and leaving certain debts unpaid and unprovided for, is a transaction "out of the usual and ordinary course of business," within the meaning of the bankruptcy act.—*Ecker v. McAllister*, 45 Md. 290; *Id.*, 54 Md. 362.

### § 179.—Property or rights transferred.

### § 180.—Intent of debtor.

### § 181.—Consideration.

### § 182.—Bona fide purchasers.

#### *Cross-References.*

Purchasers from transferees, see post, § 186.  
Transfers in general, see ante, § 173.

### § 183.—Transfers fraudulent as to partnership or individual creditors.

#### *Cross-Reference.*

Preferences of partnership or individual creditor, see ante, § 167.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 184.—Transfers void under state laws.

#### *Cross-References.*

Fraudulent transfers in general, see ante, §§ 175-182.  
State laws as rules of decision in courts of bankruptcy, see "Courts," §§ 359, 372.  
As affecting priorities of claims, see post, § 345.  
As affecting proof of claim, see post, § 312.  
Effect of failure to record statutory lien, see post, § 192.  
Record of transfer as affecting time of giving preference, see ante, § 161.  
Effect of withholding mortgage from record, for benefit of debtor, see "Fraudulent Conveyances," § 154.  
What law governs, see "Chattel Mortgages," § 82.

### § 185.—Rights of trustee as to transfers.

#### *Cross-References.*

Actions by or against trustee relating to property, see post, §§ 277-306.  
Effect of debtor's discharge, see post, § 418.  
Title acquired by trustee in general, see ante, § 151.  
Title of trustee to property fraudulently conveyed, see ante, § 142.  
Transfers by bankrupt to trustee under order of court, see ante, § 136.  
Validity of liens in general, see post, § 188.  
Assignability of right of action to set aside fraudulent conveyance, see "Fraudulent Conveyances," § 211.  
Estoppel to assert invalidity of transfer, see "Fraudulent Conveyances," § 225.  
Liability of corporation composed of fraudulent grantees of bankrupt, see "Corporations," § 30.

### § 186.—Rights and liabilities of transferees.

#### *Cross-References.*

As to amount of claim against estate, see post, § 323.  
Consideration for transfer as claim against estate, see post, § 314.  
Preferential transferees, see ante, §§ 159-166.  
Right of trustee to attack transfers, see ante, § 185.  
Rights of bona fide purchasers, see ante, § 182.

### §§ 187, 188, 189. Validity of liens against trustee—against creditors.

#### *Cross-References.*

Application of proceeds of sale of property subject to liens, see post, § 267.  
Bona fide purchasers, see ante, §§ 173, 182.

Conditional sale distinguished from other transactions, see ante, § 140.  
 Discharge of bankrupt as affecting liens, see post, § 433.  
 Enforcement, see post, § 214.  
 Fraudulent transfers, see ante, §§ 175-182.  
 Liens enforceable against property claimed as exempt, see post, § 398.  
 Pledge by debtor, see ante, §§ 172, 173.  
 Preferential transfers, see ante, §§ 159-166.  
 Proof of secured claims, see post, § 310.  
 Rights of trustee to property affected by lien, see post, §§ 205, 206.  
 Sale of land free from liens, see post, § 258.  
 Status of secured claims in distribution of estate, see post, § 323.  
 Subrogation of trustee to rights under lien, see post, § 207.  
 Title acquired by trustee in general, see ante, § 151.  
 Title of trustee to mortgaged property in general, see ante, § 143.  
 Unrecorded transfers or liens, see ante, § 184.  
 Statutory liens, see post, §§ 191, 192.  
 Liens acquired by legal proceedings prior to bankruptcy, see post, §§ 194-196.  
 State laws as rules of decision in federal courts, see "Courts," §§ 359, 372.  
 Effect of stipulations, see "Stipulations," §§ 13, 14.

#### Annotation.

Priority of rights to fund as between assignees in bankruptcy and prior assignees.—66 L. R. A. 760, note.

### §§ 190, 191, 192. Statutory liens.

#### Cross-References.

Application of proceeds of sale of property subject to liens, see post, § 267.  
 Enforcement, see post, § 215.  
 Liens in general, see ante, §§ 188, 189.  
 Liens acquired by legal proceedings prior to bankruptcy, see post, §§ 194-196.  
 Restraining proceedings in state courts, see post, § 217.  
 Dissolution of lien of distress warrant, see post, § 200.  
 Enforcement of obligations containing waiver of exemptions, see post, § 399.  
 Evidence as to amount of lien, see "Landlord and Tenant," § 262.  
 Waiver or loss of landlord's lien, see "Landlord and Tenant," § 254.  
 On property transferred by bankrupt, see "Taxation," § 511.  
 Review of decision of court of bankruptcy, see post, § 440.  
 Stay of proceedings in state court, see post, § 211.  
 Surrender of property to trustee, see ante, § 144.  
 Effect of debtor's discharge, see post, § 433.  
 Notice of lien as fraudulent transfer, see ante, § 178.

Wages as preferred claims, see post, § 348.

State laws as rules of decision in federal courts, see "Courts," § 363.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 193. Liens acquired by legal proceedings prior to bankruptcy.

#### Cross-References.

As acts of bankruptcy, see ante, § 59.  
 Dissolution of liens by adjudication, see post, §§ 198-203.  
 Effect of debtor's discharge, see post, § 433.  
 Enforcement, see post, § 216.  
 Mechanics' and laborers' liens, see ante, § 192.  
 Preferences, see ante, § 162.  
 Statutory liens, see ante, § 191.

### § 194.— In general.

(a) [1913] A creditor who sues on behalf of all creditors to set aside a fraudulent conveyance by the debtor does not thereby acquire a lien, within the meaning of Bankr. Act July 1, 1898, § 67f, providing that liens acquired within four months prior to the filing of the petition in bankruptcy are void. —Blick v. Nimmo, 121 Md. 139, 88 Atl. 116.

### § 195.— Attachment or garnishment.

#### Cross-References.

As acts of bankruptcy, see ante, § 59.  
 Damages recoverable in case of concurrent attachments after filing of petition, see post, § 305.  
 Dissolution by adjudication, see post, §§ 198-203.  
 Effect of debtor's discharge, see post, § 433.  
 Enforcement of liens, see post, § 216.  
 Preferences, see ante, § 162.  
 Restraining proceedings in state courts, see post, § 217.  
 Rights of trustee as to property affected by lien, see post, §§ 205, 206.  
 Subsequent attachment, see ante, § 20.  
 Time of vesting of title or right in trustee, see ante, § 152.

(a) [1912] Liens under attachment proceedings obtained more than four months prior to the institution of proceedings in bankruptcy against the debtor were valid as against his trustee.—Ressmeyer v. Norwood, 117 Md. 320, 83 Atl. 347.

(b) [1879] An attachment levied on the estate of a bankrupt, after the commencement of proceedings in bankruptcy, and be-

fore the adjudication, is not a lien.—*Lewis v. Higgins*, 52 Md. 614.

(c) [1878] An attachment issued more than four months prior to an adjudication of bankruptcy is not invalid, if there is no evidence that the bankruptcy proceedings were commenced before the date of the adjudication.—*Franklin v. Claflin*, 49 Md. 24.

(d) [1874] Though an attachment was levied within four months preceding the commencement of bankruptcy proceedings under Act 1867, if judgment was obtained thereon before the bankruptcy proceedings, the attachment is not dissolved thereby.—*Henkelman v. Smith*, 42 Md. 164.

(e) [1869] United States Bankrupt Law, § 14, providing for the dissolution of attachments which were issued within four months next preceding the commencement of the bankrupt proceedings, applies only to attachments on mesne process, and not to attachments on final process.—*First Nat. Bank v. Jagers*, 31 Md. 38, 100 Am. Dec. 53.

(f) [1869] Though proceedings under the United States Bankrupt Act were, by § 50, suspended until June 1, 1867, § 14 applies to an attachment on a warrant issued prior to that date, if within four months before the commencement of proceedings.—*Corner v. Mallory*, 31 Md. 468.

(g) [1766] An attachment was quashed on the ground that creditors in England were bound by the statute of bankruptcy, and could not attach the effects of a bankrupt in the province.—*Burk v. McClain*, 1 H. & McH. 236. [*Cited and annotated in 23 L. R. A. 43, on transfer of property out of state by bankruptcy or kindred proceedings.*]

## § 196.—Judgment or execution and proceedings thereon.

### Cross-References.

- As acts of bankruptcy, see ante, § 59.
- Dissolution by adjudication, see post, §§ 198-203.
- Preferences, see ante, § 162.
- Restraining proceedings in state courts, see post, § 217.
- Rights of trustee as to property affected by liens, see post, §§ 205, 206.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 197. Dissolution of liens of attachments and other proceedings by adjudication.

### Cross-References.

- Costs incurred in legal proceedings as preferred claims against bankrupt's estate, see post, § 347.
- Costs incurred in legal proceedings as provable claims against estate, see post, § 317.
- Discharge of bankrupt as affecting securities and liens, see post, § 433.
- Enforcement of rights and liens acquired by legal proceedings, see post, § 216.
- Liens acquired by attachment or garnishment, see ante, § 195.
- Loss of state court's jurisdiction over attached property, see ante, § 20.
- Nature and form of remedy against claimants under legal proceedings, see post, § 288.
- Preservation of lien and subrogation of trustee to rights under lien, see post, § 207.
- Restraining proceedings in state courts, see post, § 217.
- Rights of trustee as to property affected by lien, see post, §§ 205, 206.
- Statutory liens, see ante, § 191.
- Effect of adjudication in general, see ante, § 101.
- Purchasers from transferees of bankrupt, see ante, § 186.

### Annotation.

- Effect of bankruptcy proceedings upon prior action to rescind sale for fraud.—8 L. R. A. (N. S.) 1204, note.

## § 198.—In general.

(a) [1874] Though the attachment was levied within four months preceding the commencement of bankruptcy proceedings, if judgment is obtained thereon before the bankruptcy proceedings, the attachment is not dissolved thereby.—*Henkelman v. Smith*, 42 Md. 164.

(b) [1869] United States Bankrupt Law, § 14, providing for the dissolution of attachments which were issued within four months next preceding the commencement of the bankrupt proceedings, applies only to attachments on mesne process, and not to attachments on final process.—*First Nat. Bank v. Jagers*, 31 Md. 38, 100 Am. Dec. 53.

(c) [1766] An attachment was quashed on the ground that creditors in England were bound by the statute of bankruptcy, and could not attach the effects of a bankrupt in the province.—*Burk v. McClain*, 1 H. & McH. 236. [*Cited and annotated in 23 L.*

R. A. 43, on transfer of property out of state by bankruptcy or kindred proceedings.]

### § 199.—Insolvency of debtor.

#### *Cross-References.*

As element of preference, see ante, § 160.  
As ground for involuntary bankruptcy, see ante, § 54.

### § 200.—Time of proceeding.

#### *Cross-References.*

Effect of bankrupt's discharge on pending suit, see post, § 433.  
Enforcement of liens, see post, § 216.  
Rights of trustee as to property affected by lien, see post, §§ 205, 206.  
Enforcement of liens, see post, § 216.

(a) [1879] An attachment levied on the estate of a bankrupt, after the commencement of proceedings in bankruptcy, and before the adjudication, is not a lien.—*Lewis v. Higgins*, 52 Md. 614.

(b) [1878] An attachment issued more than four months prior to an adjudication of bankruptcy is not invalid, if there is no evidence that the bankruptcy proceedings were commenced before the date of the adjudication.—*Franklin v. Clafin*, 49 Md. 24.

(c) [1874] Though the attachment was levied within four months preceding the commencement of bankruptcy proceedings, if judgment is obtained thereon before the bankruptcy proceedings, the attachment is not dissolved thereby.—*Henkelman v. Smith*, 42 Md. 164.

(d) [1869] Though proceedings under the United States Bankrupt Act were, by § 50, suspended until June 1, 1867, § 14 applies to an attachment on a warrant issued prior to that date, if within four months before the commencement of proceedings.—*Corner v. Mallory*, 31 Md. 468.

### § 201.—Grounds for dissolution.

§ 202. (Omitted from the classification used herein.)

### § 203.—Bona fide purchasers.

#### *Cross-Reference.*

Purchasers from transferees of bankrupt, see ante, § 186.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### §§ 204, 205, 206. Rights of trustee as to property affected by lien.

#### *Cross-References.*

Actions by or against trustee relating to property, see post, §§ 277-306.  
Right to abandon property, see ante, § 150.  
Title acquired by trustee in general, see ante, § 151.  
Validity of liens as against trustee in general, see ante, § 188.

#### *Annotation.*

Right of trustee to maintain partition.—20 L. R. A. (N. S.) 105, note.

### § 207. Subrogation of trustee to rights under lien.

#### *Cross-References.*

See ante, § 178.  
Rights as to pending actions in general, see ante, § 156.  
Subrogation of surety to rights of creditor against estate, see post, § 316.  
Validity of liens as against trustee in general, see ante, § 188.

### § 208. Remedies to establish or enforce rights or liens.

#### *Cross-References.*

Actions by or against trustee, see post, §§ 277-306.  
Application of proceeds of property sold by trustee, see post, § 267.  
Effect of bankruptcy on pending suits against bankrupt, see post, § 391.  
Effect of bankrupt's discharge on pending creditor's suit, see post, § 433.  
Enforcement of liens against exempt property, see post, § 398.  
Enforcement of obligations containing waiver of exemptions, see post, § 399.  
Rights of trustee as to pending actions, see ante, § 156.  
Jurisdiction of referees, see post, § 224.  
To compel specific performance, see post, § 268.  
Claims by third persons to property demanded by provisional receiver or marshal, see ante, § 116.  
Proof of secured claims, see post, § 310.  
Validity of sale of property pledged, see "Pledges," § 56.  
Bankruptcy proceedings against contractor affecting prior assignment of mechanic's lien, see "Mechanics' Liens," § 206.  
Process in suit to enforce mechanic's lien, see "Mechanics' Liens," § 265.  
Power of state courts to incumber property in its custody with costs and expenses, see ante, § 144.  
Restraining proceedings in state courts, see post, § 217.  
Filing of petition for injunction, see post, § 302.  
Injunction in actions by or against trustee, see post, § 301.

Interference with bankrupt's property before adjudication or appointment of trustee, see ante, §§ 104, 105.

§ 209.— Nature and form.

§ 210.— Jurisdiction in general.

§ 211.— Conflicting jurisdiction of courts of bankruptcy and state courts.

(a) [1847] A vendor of land, who made a conveyance to the vendee, but was not paid the price in full, when the vendee became a bankrupt under the laws of the United States, cannot sustain a bill in equity in the state court against a purchaser with notice from the assignee of the bankrupt to enforce his lien for the balance due him, but his remedy is in the district court of the United States.—*Wilson v. Turpin*, 5 Gill 56.

§ 212.— Determination of claims to property.

§ 213.— Foreclosure of mortgages.

§ 214.— Enforcement of liens in general.

§ 215.— Enforcement of statutory liens.

§ 216.— Enforcement of rights and liens acquired by legal proceedings.

§ 217.— Restraining proceedings in state courts.

§ 218.— Vacating or nullifying decisions of state courts.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

(D) ADMINISTRATION OF ESTATE.

*Cross-Reference.*

Reopening estate, see post, § 372.

§ 219. Jurisdiction of courts.

*Cross-References.*

Examination of bankrupt or others, see post, §§ 233-243.

Of actions or proceedings by or against trustee relating to property, see post, §§ 292-296.

Of proceedings to compel specific performance, see post, § 268.

Of proceedings to enforce rights or liens against property, see ante, §§ 210-217.

To order sale of property, see post, §§ 256-270.

To set aside or vacate orders, see ante, § 36.

§§ 220-230. Referees.

*Cross-References.*

Reference on application for discharge of bankrupt, see post, § 415.

Reference on petition in involuntary proceedings, see ante, §§ 95-97.

Powers and duties on application for discharge, see post, § 415.

Power to allow claims, see post, §§ 339, 340.

Power to allow costs, see post, § 477.

Power to hear petition in voluntary proceedings, see ante, § 49.

Power to order amendment of petition and schedule in voluntary proceedings, see ante, § 44.

Power to order examination of bankrupt or others, see post, § 235.

Power to order sale by receiver before adjudication, see ante, § 117.

Power to order sale of property by trustee, see post, §§ 257-270.

Power to order transfer or surrender of property by bankrupt to trustee, see ante, § 136.

Power to select attorney for trustee, see post, § 247.

Power to set apart and report exempt property, see post, § 400.

Power to stay proceedings against bankrupt in state court, see post, § 391.

Reopening estate, see post, § 372.

Summary proceedings by trustee for recovery of assets, see post, § 288.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 231. Meetings of creditors.

*Cross-References.*

See post, § 303.

For election of trustee, see ante, §§ 123-126.

Proof of claim as affecting right to vote, see post, §§ 330-336.

Question for jury, see post, § 304.

§ 232. Duties of bankrupt in general.

§§ 233-243. Examination of bankrupt or others.

*Cross-References.*

Costs and expenses of examination, see post, §§ 469-484.

Examination as to solvency before adjudication, see ante, § 97.

Examination of bankrupt by creditors opposing his discharge, see post, § 415.

Competency of bankrupt's wife as witness, see "Witnesses," § 52.

Denial of due process of law, see "Constitutional Law," § 306.

Evidence, see post, § 340.

On reopening estate, see post, § 372.

Power of provisional receiver to require examination, see ante, § 114.

Right of creditor to examine books in hands of trustee, see post, § 245.

Inspection of bankrupt's account in hands of trustee, see post, § 274.

Review of judge's rulings, see post, §§ 439-468.

Review of referee's proceedings by judge, see ante, § 228.

Proceedings after reversal of order sustaining claim of privilege of witness, see post, § 468.

Immunity to bankrupt giving incriminating testimony, see "Criminal Law," § 42.

State law relating to competency of witnesses as rules of decision in bankruptcy court, see "Courts," § 376.

False oath as ground for refusal of discharge, see post, § 408.

In proceedings for discharge of bankrupt, see post, § 414.

In proceedings to compel surrender of property by bankrupt to trustee, see ante, § 136.

#### § 244. Depositions in proceedings after adjudication.

##### *Cross-References.*

Power of referee and procedure as taking testimony, see ante, § 225.

Proof of claims, see post, §§ 330-336.

#### § 245. Representation of creditors by trustee.

##### *Cross-Reference.*

Misconduct in effecting composition, see post, § 386.

#### § 246. Authority of trustee in general.

##### *Cross-References.*

As to insurance on life of debtor, see ante, § 148.

Employment of counsel, see post, § 272.

In actions relating to bankrupt's property, see post, § 279.

Intervention in pending actions by or against bankrupt, see ante, § 156.

Leave to sue, see post, § 285.

Power to sue in behalf of estate, see post, § 278.

#### § 247. Instructions of court or referee.

##### *Cross-Reference.*

Leave to sue, see post, § 285.

#### § 248. Appraisal and inventory of property.

##### *Cross-Reference.*

As affecting sale, see post, § 262.

#### § 249. Custody, use, and care of property.

##### *Cross-References.*

Abandonment of property by trustee, see ante, § 150.

Compelling surrender or transfer of property by bankrupt, see ante, § 136.

Interference with custody as contempt of bankruptcy court, see "Contempt," § 18.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 250. Collection of assets.

##### *Cross-References.*

Actions or proceedings by trustee, see post, §§ 277-306.

Costs and expenses as preferred claims, see post, § 347.

Costs and fees, see post, §§ 469-484.

Leave to sue, see post, § 285.

Reopening estate for purpose of administering concealed assets, see post, § 372.

##### *Annotation.*

Liability of trustee in bankruptcy for failure to collect assets.—16 L. R. A. (N. S.) 341, note.

(a) [1872] The provision in § 14 of the act of 1867, that the judge shall convey and assign the bankrupt's property to the assignee, "by an instrument under his hand," is merely directory. Therefore the signature of the judge is not essential to the validity of the conveyance, etc., when some equally formal mode has been adopted, sanctioned by the seal of the court, which imports verity and gives authenticity to all the judicial acts of the judge.—Zantinger v. Ribble, 36 Md. 32.

#### § 251. Submission to arbitration.

#### § 252. Compromises.

#### § 253. Redemption of property.

##### *Cross-References.*

See ante, §§ 139, 185, 205.

Right of trustee of bankrupt mortgagor to compel assignment of mortgage, see ante, § 207.

#### § 254. Performance of bankrupt's obligations.

##### *Cross-Reference.*

Payments to mature life policy, see ante, § 246.

#### § 255. Acceptance of lease by trustee.

##### *Cross-References.*

Lien for rent, see ante, § 191.

Rents and damages for breach of covenants as claims provable, see post, § 318.

Rents as preferred claims, see post, § 350.

#### §§ 256-270. Sale of Property—Conveyance—Payment—Rights of purchasers.

##### *Cross-References.*

Appeal and revision of proceedings, see post, §§ 439-468.

Process for sale of property subject to statutory lien as equitable execution, see ante, § 191.

Review of referee's proceedings by judge, see ante, § 228.

Sale by provisional receiver, see ante, § 117.

Sale of exempt property, and claim and allowance of exemption from proceeds, see post, § 400.

Sale of reversionary interest in land set apart as homestead, see post, § 396.  
 Champertous sale, see "Champerty and Maintenance," § 7.

Presumption as to regularity of proceedings, see "Evidence," § 82.

Validity of contracts to prevent competition, see "Contracts," § 130.

Dower on death of bankrupt, see post, § 403.

Duty to prove secured claims, see post, § 327.

Authority of trustee to purchase at tax sale, see "Taxation," § 674.

Application for leave to sell as waiver of right to avoid preference, see ante, § 168.

Following state statutes and practice in federal courts, see "Courts," § 346.

See ante, § 188; post, §§ 311, 316.

Compensation of referee, see ante, § 223.

Compensation of trustee, see post, § 368.

Taxes as preferred claims against bankrupt's estate, see post, § 346.

Jurisdiction of controversy between purchasers, see ante, § 210.

Landlord's consent to assignment of lease as affecting right of subsequent receiver of lessee to take lease, see "Landlord and Tenant," § 75.

Title to maintain trespass, see "Trespass," § 19.

§ 271. (Omitted from the classification used herein.)

## § 272. Expenditures.

### *Cross-References.*

Expenses of management of property, see ante, § 249.

Instructions of court or referee as to employment of counsel, see ante, § 247.

## § 273. Deposits and payments.

### *Cross-References.*

Payment of exemption, see post, § 400.

Right of surety of depository to priority of United States, see "Subrogation," § 7.

## § 274. Accounts, statements, and reports of trustee.

## § 275. Reimbursement and indemnity to trustee.

## § 276. Representatives of deceased trustees.

### *Cross-Reference.*

Death of trustee, see ante, § 133.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## (E) ACTIONS BY OR AGAINST TRUSTEE.

### *Cross-References.*

Actions by or against receivers, see ante, § 115.

Actions on trustees' bonds, see post, § 373.  
 Costs in actions by or against trustee, see post, §§ 469-484.

Recovery of money paid to trustee under decree of state court, see ante, § 218.

Rights of trustee as to pending actions, see ante, § 156.

Trustee's right to indemnity against costs and expenses, see ante, § 275.

Adoption of practice of state courts relating to costs by federal courts, see "Courts," § 357.

Commencement of action by trustee as demand sufficient to start running of interest, see "Interest," § 47.

Effect of stipulation, see "Stipulations," §§ 13, 14.

Election of remedy, see "Election of Remedies," § 3.

Interpleader, see "Interpleader," § 11.

Security for costs under state laws, see "Costs," § 109.

## § 277. Actions by trustee.

### *Annotation.*

Equity jurisdiction of suit by trustee to recover sum of money from one who has received fraudulent transfer or unlawful preference.—16 L. R. A. (N. S.) 414, note.

## § 278.—In general.

### *Cross-Reference.*

Defenses, see post, § 290.

(a) [1850] The plaintiff, to show his right to institute this action as assignee of A., a bankrupt, and his appointment as such, presented the proceedings which took place in the Circuit Court of the District of Columbia, on the application of the bankrupt. *Held*, that the court has a right to decide on the correctness of these proceedings, and the validity of the appointment.—Hall v. Sewell, 9 Gill 146.

(b) [1850] The bankrupt law required an assignee in bankruptcy to give bond. One appointed as a general assignee by the Circuit Court of District of Columbia gave bond as such, and was specially appointed assignee of a certain bankrupt, but failed to give bond in such capacity. *Held*, that such appointment did not vest in the assignee the bankrupt property, so as to authorize him to bring an action in Maryland to recover a debt due the bankrupt, the state court deciding the point on analogy to the right of a trustee under its insolvent laws.—Hall v. Sewell, 9 Gill 146.

**§ 279.—Relating to property or proceeds thereof.**

*Cross-References.*

See post, § 287.  
 Conclusiveness of adjudication in bankruptcy, see ante, § 100.  
 Conditions precedent, see post, § 284.  
 Effect of allowance of claims against estate, see post, § 341.  
 Effect of bankrupt's discharge, see post, § 418.  
 Effect of want of notice of petition for bankruptcy, see ante, § 87.  
 Interest on claims for assets withheld from trustee, see ante, § 250.  
 Property and rights vesting in trustee, see ante, §§ 138-149.  
 Reopening estate for purpose of administering concealed assets, see post, § 372.  
 Rights as against bona fide purchasers from transferees, see ante, § 186.  
 Rights of trustee as to preferences, see ante, § 168.  
 Rights of trustee as to property affected by liens, see ante, §§ 205, 206.  
 Rights of trustee as to transfers, see ante, § 185.  
 Title acquired by trustee in general, see ante, § 151.  
 Validity of lien as against trustee, see ante, § 188.

(a) [1874] The assignee is not entitled to any greater rights in respect to recovering back money or other property under § 39 than under § 35, Act 1867. The two sections are to be construed together.—*Jordan v. Downey*, 40 Md. 401. [Cited and annotated in 48 L. R. A. 36, on administration of federal laws in state courts.]

**§ 280.—Contracts and claims of bankrupt.**

*Cross-Reference.*

Rights of action passing to trustee, see ante, § 145.

**§ 281.—Bankruptcy of partners**

*Cross-References.*

Defenses, see post, § 290.  
 Property passing to trustee, see ante, § 149.  
 Transfers fraudulent as to partnership or individual creditors, see ante, § 183.

**§ 282.—Bankruptcy of corporations.**

*Cross-References.*

Conditions precedent, see post, § 284.  
 Power to make assessments on corporate stock, see ante, § 250.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 283. Actions against trustee.**

*Cross-Reference.*

Leave to sue, see post, § 285.

**§ 284. Condition precedent in general.**

*Cross-References.*

See, also, ante, § 154; "Trover and Conversion," § 9.

**§ 285. Leave to sue.**

*Cross-Reference.*

Leave to intervene, see ante, § 156.

**§ 286. (Omitted from the classification used herein.)**

**§§ 287, 288. Nature and form of remedy.**

*Cross-References.*

Actions by receivers, see ante, § 115.  
 As to surplus income of trust estate, see ante, § 143.  
 Enforcement of rights or liens against property, see ante, §§ 209-218.  
 Jurisdiction, see post, §§ 292-296.  
 Summary proceedings, see post, § 288.  
 Damages, see post, § 305.  
 Acts constituting conversion, see "Trover and Conversion," § 9.  
 For determination of adverse claims before appointment of trustee, see ante, § 116.  
 Injunction, see post, § 301.  
 To compel surrender of property by bankrupt to trustee, see ante, § 136.  
 As denial of due process of law, see "Constitutional Law," § 306.  
 Dissolution of liens acquired by legal proceedings, see ante, §§ 198-203.  
 Validity of prior assignments, see ante, § 178.

(a) [1874] An assignee in bankruptcy can obtain possession of a fund in the state court derived from the execution of a fraudulent judgment in no other manner than by filing a petition in that court.—*Jordan v. Downey*, 40 Md. 401.

**§ 289. Joinder of causes of action.**

*Cross-References.*

Misjoinder of causes of action, see "Action," § 38.  
 Multifariousness, see "Equity," §§ 148, 150.  
 Under general provisions of Code, see "Action," § 48.

**§ 290. Defenses.**

*Cross-References.*

See post, § 300.  
 Abandonment of property by trustee, see ante, § 150.  
 Effect of allowance of claim of creditor preferred, see post, § 341.  
 Effect of bankrupt's discharge, see post, § 418.  
 Laches, see post, § 298.  
 Set-offs and counterclaims against trustee, see ante, § 154.  
 Usury as defense available to trustee against mortgage, see ante, § 213.



(a) [1874] The assignee is not entitled to any greater rights in respect to recovering back money or other property under § 39 than under § 35, Act 1867. The two sections are to be construed together.—*Jordan v. Downey*, 40 Md. 401. [*Cited and annotated* in 48 L. R. A. 36, on administration of federal laws in state courts.]

(b) [1850] The plaintiff, to show his right to institute this action as assignee of A., a bankrupt, and his appointment as such, presented the proceedings which took place in the Circuit Court of the District of Columbia, on the application of the bankrupt. *Held*, that the court has a right to decide on the correctness of these proceedings, and the validity of the appointment.—*Hall v. Sewell*, 9 Gill 146.

(c) [1850] The bankrupt law required an assignee in bankruptcy to give bond. One appointed as a general assignee by the Circuit Court of the District of Columbia gave bond as such, and was specially appointed assignee of a certain bankrupt, but failed to give bond in such capacity. *Held*, that such appointment did not vest in the assignee the bankrupt property, so as to authorize him to bring an action in Maryland to recover a debt due the bankrupt, the state court deciding the point on analogy to the right of a trustee under its insolvent laws.—*Hall v. Sewell*, 9 Gill 146.

### § 291. Jurisdiction.

#### *Cross-References.*

See ante, § 284.

Actions on trustees' bonds, see post, § 373.

As affected by situation of property, see ante, § 141.

Of referees, see ante, § 224.

Proceedings for examination of bankrupt or others, see ante, § 235.

### § 292.— United States court in general.

#### *Cross-References.*

Actions by bankrupt, see post, § 390.

Venue, see post, § 297.

### § 293.— Courts of bankruptcy.

#### *Cross-References.*

In proceedings to establish or enforce rights or liens against bankrupt's property, see ante, § 210.

Concurrent and conflicting jurisdiction, see post, § 296.

Validity of prior assignments, see ante, § 178.

Form of remedy, see ante, § 288.

Of state courts, see post, § 295.

Presentation in lower court of grounds of review, see post, § 458.

### § 294.— United States circuit courts.

### § 295.— State courts.

#### *Cross-References.*

See ante, § 288.

Concurrent and conflicting jurisdiction of United States courts and state courts, see post, § 296.

Removal from state to federal court, see "Removal of Causes," §§ 11, 72.

(a) [1874] Under the bankrupt acts of 1841 and 1867, the assignee in bankruptcy could sue in the state courts to collect assets vesting in him by the assignment, and to set aside payments, or transfers fraudulent under the bankruptcy laws or under the state laws or at common law.—*Jordan v. Downey*, 40 Md. 401. [*Cited and annotated* in 48 L. R. A. 36, on administration of federal laws in state courts.]

### § 296.— Concurrent and conflicting jurisdiction of United States courts and state courts.

#### *Cross-References.*

Conflicting jurisdiction of courts of bankruptcy and state courts in general, see ante, § 20.

Jurisdiction of state courts, see ante, § 295.

Jurisdiction of United States courts, see ante, §§ 292-294.

In proceedings to enforce rights or liens against bankrupt's property, see ante, § 211.

Proceedings for examination of bankrupt or others, see ante, § 235.

(a) [1913] The jurisdiction of the state court over a suit to set aside a fraudulent conveyance is not divested by the institution of bankruptcy proceedings more than four months after the commencement of the suit, under Bankr. Act. July 1, 1898, § 70e, as amended by Act Feb. 5, 1903, § 16, giving state courts concurrent jurisdiction over suits to avoid fraudulent conveyances by bankrupts.—*Blick v. Nimmo*, 121 Md. 139, 88 Atl. 116.

(b) [1913] The suggestion by the defendant, in an action to set aside a fraudulent conveyance, that a petition in bankruptcy has been filed against him does not stay the proceedings in the state court, or divest that court of jurisdiction.—*Blick v. Nimmo*, 121 Md. 139, 88 Atl. 116.

**§ 297. Venue.****§ 298. Time to sue, and limitations.***Cross-References.*

See post, § 419.

Limitations affecting claims against bankrupt's estate, see post, § 314.

Time for proof of claims, see post, § 328.

Time for reopening bankruptcy proceedings, see post, § 372.

Application of general statutes of limitations, see "Limitation of Actions," § 37.

Commencement of action, see "Limitation of Actions," § 130.

Fraud as affecting computation of period of limitation under general statutes, see "Limitation of Actions," § 100.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 299. Parties.***Cross-References.*

See ante, § 278; post, § 340.

Actions on trustees' bonds, see post, § 373.

Intervention by trustee in pending actions by or against bankrupt, see ante, § 156.

Joinder of parties defendant, see "Parties," § 25.

**§ 300. Process, notice of suit, and appearance.***Cross-References.*

Consent to jurisdiction, see ante, § 293.

Notice of examination of bankrupt or others, see ante, § 235.

Process in suit to enforce mechanic's lien, see "Mechanics' Liens," § 265.

**§ 301. Injunction and receiver.***Cross-References.*

Adoption of state practice relating to injunction bonds, see "Courts," § 357.

Filing of bankruptcy petition as injunction, see ante, § 101.

Injunction against suit brought without leave, see ante, § 285.

Issuance of injunction by referee, see ante, § 224.

Restraining enforcement of liens, see ante, § 217.

**§ 302. Pleading.***Cross-References.*

Demurrer for defect of parties, see ante, § 299.

On intervention by trustee in pending actions by or against bankrupt, see ante, § 156.

Sufficiency to support judgment, see post, § 305.

Allegations of fact and conclusions, see "Pleading," § 10.

Judgment on pleadings, see "Pleading," § 345.

Supplemental complaint on making trustee party to pending action, see ante, § 156.

Multifariousness, see "Equity," §§ 148, 150.

Sufficiency of verification of denial of trustee's right to sue in his representative capacity, see "Pleading," § 301.

(a) [1874] Bankrupt Act 1867, § 35, provides that if a debtor, while insolvent, or in contemplation of insolvency, within four months before filing of a petition in bankruptcy, prefers a creditor who knows or has reason to believe that the preference is in fraud of the statute, the transaction is void. A debtor confessed judgment. His property was sold under execution, and the proceeds paid into court. The debtor's assignee in bankruptcy filed a petition to have the proceeds paid to him, because the confession of judgment was fraudulent. The creditor answered, on oath, that the judgment was rendered more than four months before bankruptcy, and denied knowledge, or any reason to believe, that the debtor was insolvent or contemplated insolvency. The answer was uncontradicted. *Held*, that the assignee could not recover.—*Jordan v. Downey*, 40 Md. 401. [Cited and annotated in 48 L. R. A. 36, on administration of federal laws in state courts.]

**§ 303. Evidence.***Cross-References.*

As to bankrupt's acquisition of property by fraud, see ante, § 140.

As to claims against estate, see post, § 340.

Deposition, see ante, § 244.

In summary proceedings, see ante, § 288.

Power of referee taking depositions, see ante, § 225.

Use and effect of examination of bankrupt or others, see ante, § 243.

Competency of husband and wife as witnesses, see "Witnesses," § 52.

Privileged communications, see "Witnesses," § 204.

Testimony as to transactions with persons since deceased, see "Witnesses," §§ 140, 149.

See ante, § 166.

Competency of evidence as to value of property, see "Evidence," § 113.

(a) [1880] To prove that a creditor, when he took an assignment of his debtor's property, knew, or had reasonable cause to believe, that his debtor was insolvent, so as to make the transaction a violation of the bankruptcy laws, evidence of such knowledge after the date of the assignment is inadmissible.—*Ecker v. McAllister*, 54 Md. 362.

(b) [1880] Bankrupt Act 1867, c. 35, invalidates certain transfers by an insolvent debtor, and provides that, if made out of the usual course of business, such fact shall be prima facie evidence of fraud. *Held*, that where one partner, after a settlement of the partnership affairs, received an assignment of the other partner's book accounts and personal property, at which time the latter also assigned all his other property to another person, the burden of proof is on the former partner to show that he received the assignment without knowledge or reasonable cause to believe that the assignor was insolvent or contemplated insolvency.—*Ecker v. McAllister*, 54 Md. 362.

(c) [1876] Where a debtor, knowing himself to be insolvent, transferred property to his creditor, the presumption is that he intended it as a preference, so as to defeat the operation of the bankrupt act, and his testimony as to what his intention was is inadmissible to rebut such presumption.—*Ecker v. McAllister*, 45 Md. 290. [*Cited and annotated* in 23 L. R. A. (N. S.) 376, 386, 396, on right of one to testify as to his intent.]

(d) [1872] The assignment does not confer upon the assignee the right to sue his bankrupt's debtors, but is merely evidence of a right previously vested in the assignee, in virtue of the adjudication in bankruptcy and of his appointment as assignee. Hence, in a suit by an assignee against his bankrupt's debtor, the plaintiff, if his right to sue is not put in issue by the pleadings, is not bound to prove the assignment.—*Zantzinger v. Ribble*, 36 Md. 32.

(e) [1850] In an action in a state court by an assignee in bankruptcy appointed by a federal court to recover a debt due the bankrupt, the proceedings in bankruptcy introduced in evidence are not conclusive of the assignee's right to sue, but the state court may judge of the sufficiency of the assignee's appointment.—*Hall v. Sewell*, 9 Gill 146.

### § 304. Trial.

#### *Cross-References.*

See ante, § 166.

Sufficiency of findings to support judgment, see post, § 305.

Right to jury trial, see *Jury*, § 14.

(a) [1874] In passing upon claims of assignees in bankruptcy, a state court is not proceeding under the bankrupt act; and it only recognizes that act as the source of the assignee's title in the same manner as though he had derived title from a deed or a contract.—*Jordan v. Downey*, 40 Md. 401. [*Cited and annotated* in 48 L. R. A. 36, on administration of Federal laws in state courts.]

### § 305. Judgment.

#### *Cross-References.*

Compromise of claim, see ante, § 252.

Conclusiveness of adjudication as affected by jurisdiction of state court, see ante, § 296.

Enforcement of judgment of United States Circuit Court as interference with jurisdiction of bankruptcy court, see ante, § 294.

Jurisdiction to set aside or vacate orders, see ante, § 36.

On intervention by trustee in pending actions by or against bankrupt, see ante, § 156.

Recovery of interest on claims for assets withheld from trustee, see ante, § 250.

Vacating judgment of state court, see ante, § 218.

Interest on judgment, see "*Interest*," § 22.

Proof of cause of action to support default judgment, see "*Judgment*," § 126.

### § 306. Appeal and error.

#### *Cross-References.*

Appeal and revision of proceedings, see post, §§ 439-468.

Appeal in forma pauperis, see "*Appeal and Error*," § 389.

Determination of cause on appeal from judgment of state court, see "*Appeal and Error*," § 1177.

Exemption from requirement of security on appeal, see "*Appeal and Error*," § 374.

Review of discretion of trial court in awarding costs, see "*Appeal and Error*," § 984.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### (F) CLAIMS AGAINST AND DISTRIBUTION OF ESTATE.

#### *Cross-References.*

Appeal and revision of proceedings, see post, §§ 439-468.

Application of proceeds of sale of incumbered property, see ante, § 267.

Conclusiveness of adjudication in bankruptcy, see ante, § 100.

Duties of bankrupt as to false claims, see ante, § 232.

Enforcement of obligations containing waiver of exemptions, see post, § 399.

Expenses of administering estate, see ante, § 272.

Liability of endorser as affected by failure of holder to prove note in bankruptcy proceedings against maker, see "Bills and Notes," § 301.

### § 307. Creditors entitled to prove claims.

#### *Cross-References.*

Assigned claims, see post, § 314.

Claims provable, see post, §§ 314-320.

Creditors entitled to maintain or join in petition, see ante, § 76.

Amount of claim as affected by security, see post, § 323.

Interest on balances between partners, see post, § 324.

Mode of distribution, see post, § 354.

Priorities, see post, § 351.

Amendment of proof of claims, see post, § 336.

Duty to prove claims, see post, § 327.

Effect of proving claim and sharing in distribution, see post, § 364.

Enforcement of liens against bankrupt's property, see ante, §§ 213-217.

Estoppel or forfeiture of right to prove debt, see post, § 312.

Examination of secured creditors, see ante, §§ 234-243.

Judgments after filing of petition as claims provable, see post, § 319.

Judgments before filing of petition as claims provable, see post, § 315.

Reinstatement of lien relinquished by mistake, see ante, § 214.

Right of surety to prove claim in creditor's name, see post, § 316.

Validity of liens in general, see ante, § 187-203.

Actions to recover preference, see ante, §§ 277-306.

Extent of preferred creditor's liability to trustee, see ante, § 186.

On right to vote at meetings of creditors, see ante, § 231.

Preference as set-off against creditor's claim, see post, § 326.

Preferences voidable in general, see ante, §§ 159-166.

Right to deduct amount of new credits from amount of preferences required to be surrendered, see ante, § 169.

Expiration of time for filing claim, see post, § 328.

Postponement of claim for creditor's fraud, see post, § 345.

### § 308.— In general.

### § 309.— Partnership and individual creditors.

### § 310.— Secured claims.

(a) [1823] A secured creditor of a bankrupt, who proves his claim in bankruptcy, may, in most cases, be compelled to deliver up his security to be distributed as part of the estate, or, if he chooses to pursue his

security and receive only partial satisfaction, may prove for the balance.—*Watkins v. Worthington*, 2 Bland 509.

### § 311.— Effect of preference and surrender thereof.

### § 312.— Estoppel or forfeiture of right.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 313. Claims provable.

#### *Cross-References.*

Claims extinguished by discharge of bankrupt, see post, §§ 421-426.

Claims to support petition, see ante, § 76.

#### *Annotation.*

Provability of partnership debts in individual proceedings.—69 L. R. A. 772, note.

### § 314.— In general.

#### *Cross-References.*

Creditors entitled to prove claims, see ante, §§ 308-312.

Loan for benefit of bankrupt corporation distinguished from purchase of stock, see "Corporations," § 460.

Contingent demand or liabilities, see post, § 316.

Rent and damages for breach of covenants in lease, see post, § 318.

Claims affected by discharge, see post, § 421.

Expunction of barred claim, see post, § 342.

Operation of judgment after adjudication to suspend running of statute of limitations, see post, § 319.

Right to plead statute of limitations as defense to claim, see post, § 339.

Accrual of right of action, see "Limitation of Actions," § 53.

Claims assigned after proof, see post, § 337.

Priorities, see post, § 346.

Alimony, see post, § 315.

Wife's right to establish lien, see ante, § 188.

(a) [1875] A debtor, in March, 1840, applied for the benefit of the state insolvent laws, and obtained his discharge in January, 1841. In March, 1842, he applied for the benefit of the federal bankrupt law, which went into effect the month before, and obtained his final discharge in August, 1842. The list of debts furnished by the bankrupt did not include any filed in the insolvency proceeding, and the assets of the insolvent being insufficient to pay the creditors named in the insolvency proceedings, balances of their claims remained unsatisfied at the time of the filing of the petition in bankruptcy.

Act 1834, c. 298, § 2, provided that the property which accrues to the insolvent by inheritance after his discharge shall vest in the trustee, for the benefit of his creditors who were such at the time of his application. In 1843 the debtor inherited an interest in lands, which the trustee in insolvency afterwards sold. *Held*, that the title to the lands, devolved on the insolvent trustee by Act 1834, was not defeated by the discharge under the bankrupt law. By the debtor's discharge under the insolvent laws he was released from all his debts existing at the time of his application, and his then creditors ceased to be such, and were not entitled to prove their claims against him in the bankrupt court, and the debtor had no interest in the land which could pass to his assignee, the statute having substituted the trustee in insolvency as the person entitled to the inheritance.—*Lavender v. Gosnell*, 43 Md. 153, 12 N. B. R. 282. [*Cited and annotated in 45 L. R. A. 188, on relation of bankrupt law to insolvent proceedings under state laws.*]

### § 315.—Judgment before filing of petition.

#### *Cross-References.*

- Claims barred by limitations, see ante, § 314.
- Judgments after filing of petition, see post, § 319.
- Necessity of filing proof of claim, see post, § 327.
- Effect of stay of proceedings to enforce payment of alimony, see post, § 391.
- Liabilities discharged, see post, § 421.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 316.—Instruments in writing made before filing of petition.

#### *Cross-References.*

- Claims arising out of illegal transactions, see ante, § 314.
- Claims extinguished by discharge, see post, §§ 421-426.
- Rent, see post, § 318.
- Claims extinguished by discharge, see post, § 421.
- Claims of wife, see ante, § 314.

#### *Annotation.*

Provability of claim under covenant indemnifying against loss of rent, or accelerating future rent in case of default.—31 L. R. A. (N. S.) 270, note.

- (a) [1876] Mere liability as surety for a

bankrupt does not constitute a claim which may be proved against him under the bankrupt act. The debt must be actually paid by the surety before he has a claim provable in bankruptcy.—*Ecker v. Bohn*, 45 Md. 278.

### § 317.—Costs incurred before filing of petition.

#### *Cross-References.*

- Allowance to assignee for benefit of creditors as affected by invalidity of assignment, see ante, § 178.
- Allowance to assignee for benefit of creditors for management of property after adjudication, see ante, § 249.
- Costs as preferred claims, see post, § 347.
- Enforcement of claims or liens for costs of proceedings dissolved by adjudication, see ante, § 216.
- Expenses of administering estate, see ante, § 272.
- Power of state court to incumber property in its custody with costs and expenses, see ante, § 144.

### § 318.—Contracts.

#### *Cross-References.*

- Claims extinguished by discharge, see post, §§ 421-426.
- Claims to support petition, see ante, § 66.
- Acceptance of lease by trustee, see ante, § 255.
- Allowance of claims, see post, § 341.
- Bankruptcy as dissolving renewal clause in lease, see post, § 389½.
- Discharge of tenant as releasing guarantor, see post, § 430.
- Rent as expenses of administration, see ante, § 255.
- Rent as preferred claim, see post, § 350.

### § 319.—Judgments after filing of petition.

### § 320.—Unliquidated claims.

#### *Cross-References.*

- Claims to support petition, see ante, § 76.
- Right of wife in husband's personality before divorce, see ante, § 314.

#### *Annotation.*

Right to prove unliquidated claim for tort in bankruptcy.—8 L. R. A. (N. S.) 961, note.

### § 321.—Amount of claims.

#### *Cross-Reference.*

- Attorney's fees, see post, § 482.

### § 322.—In general.

### § 323.—Secured claims.

#### *Cross-References.*

- Application of payment to unsecured debt, see "Payment," § 39.
- Application of proceeds of sale of incumbered property, see ante, § 267.
- Deposit in composition proceedings, see post, § 378.

Enforcement of liens against bankrupt's property, see ante, §§ 213-217.

Part payment, see post, § 325.

Referee's commissions on incumbered property or proceeds thereof, see ante, § 223.

Trustee's commissions on incumbered property or proceeds thereof, see post, § 368.

(a) [1823] A secured creditor of a bankrupt, who proves his claim in bankruptcy, may, in most cases, be compelled to deliver up his security to be distributed as part of the estate, or, if he chooses to pursue his security and receive only partial satisfaction, may prove for the balance.—Watkins v. Worthington, 2 Bland 509.

### § 324.—Interest.

#### *Cross-References.*

Interest as consideration for transfer by bankrupt, see ante, § 181.

Right of creditor entitled to lien relinquished by mistake, see ante, § 214.

#### *Annotation.*

Right to interest on allowed claims in bankruptcy.—29 L. R. A. (N. S.) 887, note.

### § 325.—Part payment.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 326. Set-offs and counterclaims.

#### *Cross-References.*

See ante, § 311.

Against trustee, see ante, § 154.

Right of preferred creditor to set off amount of new credit extended to bankrupt, see ante, § 169.

Right to amend proof of claim omitting set-off, see post, § 336.

#### *Annotation.*

Set-off of bankruptcy of third persons.—55 L. R. A. 73.

Right of creditor to set off new credits given after receiving a preference.—Id. 344.

### § 327. Necessity of proof of claims.

#### *Cross-References.*

As affecting right of government to priority, see post, § 349.

Amount, see ante, § 322.

Creditors entitled to prove claims, see ante, § 310.

Effect of proof, see post, § 364.

### § 328. Time for proof of claims.

#### *Cross-References.*

As affecting right to have estate reopened, see post, § 372.

As affecting set-off or counterclaim against trustee, see ante, § 154.

Proofs perfected after dividend, see post, § 356.

Provability of claims barred by limitations, see ante, § 314.

Right to amend proof, see post, § 336.

### §§ 329-336. Proof of claims.

#### *Cross-References.*

Evidence to establish claim, see post, § 340.

Filing claims, see post, § 343.

Proof as affecting right to have estate reopened, see post, § 372.

Competency of wife's testimony in support of her claim against husband, see "Witnesses," § 52.

### § 337. Assignment of claims after proof.

#### *Annotation.*

Set-off of debts or claims assigned.—55 L. R. A. 68, note.

### §§ 338-340. Objections to claim and proceedings thereon.

#### *Cross-References.*

Duty of bankrupt, see ante, § 232.

Instructions by court or referee to trustee, see ante, § 247.

Re-examination and expunction of allowed claims, see post, § 342.

### § 341. Allowance or disallowance of claims.

#### *Cross-References.*

Appeal or revision, see post, §§ 439-468.

Duties of bankrupt as to false claims, see ante, § 232.

Instructions by court or referee to trustee, see ante, § 247.

Necessity of allowance as affecting trustee's right to set aside transfer, see ante, § 279.

Objections to claims and proceedings thereon, see ante, §§ 339, 340.

Right to jury trial, see "Jury," § 14.

### § 342. Re-examination of claims.

#### *Cross-References.*

See ante, § 314.

Appeal and revision of proceedings, see post, §§ 439-468.

Objections to claims and proceedings thereon, see ante, §§ 339, 340.

### § 342½. Review of referee's proceedings by judge.

### § 343. Filing claims proved.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### §§ 344-351. Priorities.

#### *Cross-References.*

Application of proceeds of sale of bankrupt's property, see ante, § 267.

As affected by ownership or possession of property, see ante, § 140.

Judgment against trustee as substituted defendant as preferred claim, see ante, § 156.

Necessity of proving secured claims, see ante, § 327.  
 Note as discharge of debt having privileges, see ante, § 314.  
 Review, see post, § 440.  
 Rights as to money held by bankrupt as trustee, see ante, § 140.  
 Rights as to property fraudulently obtained by bankrupt, see ante, § 140.  
 Validity of liens, see ante, §§ 187-203.  
 Validity of unrecorded transfers or liens, see ante, § 184.  
 Deposit in composition proceedings, see post, § 378.  
 Effect of discharge of bankrupt on liability for taxes, see post, § 422.  
 Right to lien, see ante, § 191.  
 Sale of property free from lien, see ante, § 262.  
 Sale of property subject to lien, see ante, § 262.  
 Taxes as secured claims, see ante, § 310.  
 Estoppel to claim tax lien on money paid to bankrupt as his state exemption, see "Estoppel," § 62.  
 Liability of property, see "Taxation," § 87.  
 Mode of assessment, see "Taxation," § 338.  
 Subrogation to right of preferential payment of taxes, see "Subrogation," § 26.  
 Taxation by state of property in hands of trustee, see "Taxation," § 6.  
 Attorneys' fees payable out of estate, see post, § 482.  
 Claims proved after dividend, see post, § 356.  
 Compensation of referee, see ante, § 223.  
 Compensation of trustee, see post, § 368.  
 Liability of estate for costs and fees, see post, §§ 469-484.  
 Amount, see ante, § 322.  
 Estoppel or forfeiture of right, see ante, § 312.  
 Validity of laborers' liens as against trustee, see ante, § 192.  
 Subrogation of lender of money for payment of claims to priority, see "Subrogation," § 23.

### § 352. Mode of distribution.

#### *Cross-References.*

Application of proceeds of sale of bankrupt's property, see ante, § 267.  
 Proceedings for distribution, see post, § 357.

### § 353.— In general.

### § 354.— Partnership and individual estates and debts.

#### *Cross-References.*

Creditors entitled to prove claims, see ante, § 309.  
 Effect of proof of claim, see post, § 363.  
 Exemptions in partnership and individual property, see post, § 397.  
 Interest on balances between partners, see ante, § 324.  
 Priorities, see ante, § 351.

Title of trustee to partnership and individual property, see ante, § 149.

### § 355.— Secured claims.

#### *Cross-References.*

See ante, § 185.  
 Amount of claims, see ante, § 323.  
 Enforcement of liens against bankrupt's property, see ante, §§ 213-217.  
 Effect of proof and distribution, see post, § 364.  
 Necessity of proving claim, see ante, § 327.  
 Right to prove claim as secured or unsecured, see ante, § 310.

(a) [1823] A secured creditor of a bankrupt, who proves his claim in bankruptcy, may, in most cases, be compelled to deliver up his security to be distributed as part of the estate, or, if he chooses to pursue his security and receive only partial satisfaction, may prove for the balance.—*Watkins v. Worthington*, 2 Bland 509.

### § 356.— Claims proved after dividend.

### § 357. Proceedings for distribution in general.

#### *Cross-References.*

Meetings of creditors, see ante, § 231.  
 Mode of distribution, see ante, §§ 354, 356.  
 Unauthorized payment affecting attorney's lien, see post, § 360.

### §§ 358-361. Dividends.

#### *Cross-Reference.*

Part payment tolling limitations as to joint obligor, see "Limitation of Actions," § 155.

### §§ 362-364. Effect of proof and distribution on rights of creditors.

#### *Cross-References.*

Effect of discharge of bankrupt, see post, §§ 418-433.  
 Petition for second adjudication, see ante, § 76.  
 Election of remedy, see "Election of Remedies," §§ 3, 7.  
 Waiver of lien acquired by proceedings in state court, see ante, § 191.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### (G) ACCOUNTING AND DISCHARGE OF TRUSTEE.

#### *Cross-References.*

Accounting by referee, see ante, § 223.

### § 365. Duty to account in general.

### § 366. Proceedings for final accounting.

**§ 367. Credits.***Cross-Reference.*

Allowance of counsel fees, see ante, § 272.

**§ 368. Compensation.***Cross-Reference.*

Of referee, see ante, § 223.

(a) [1906] Under Bankr. Act 1898, § 48, c. 541, 30 Stat. 557 (U. S. Comp. St. 1901, p. 3439), providing that trustees shall receive as full compensation for their services commissions not to exceed a certain per centum, and the amendment of 1903, § 72, c. 487, 32 Stat. 800 (U. S. Comp. St. Supp. 1905, p. 689), providing that the trustees shall not receive in any form or be allowed any other or further compensation, a contract between a trustee in bankruptcy and a creditor, whereby the latter agreed, in consideration of the trustee's acceptance of the appointment, to pay him a sum equal to the difference between a certain per cent. on the entire proceeds of the sale and the compensation which he would receive under the statute, was void.—*Devries v. Orem*, 104 Md. 648, 65 Atl. 430.

**§ 369. Objections to account and proceedings thereon.****§ 370. Approval or disapproval of account.****§ 371. Discharge of trustee.***Cross-References.*

Close of estate and reopening proceedings, see post, § 372.

Proceedings after reversal of order sustaining claim of privilege of witness, see post, § 468.

**§ 372. Close of estate, and reopening of proceedings.***Cross-References.*

As affecting time to sue, see ante, § 298.

Effect of settlement of estate before death of trustee, see ante, § 133.

Reversion of property or surplus to debtor, see post, § 438.

**§ 373. Liabilities on trustees' bonds.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**IV. COMPOSITION.***Cross-References.*

Appeal and revision of proceedings, see post, §§ 439-468.

Effect of foreign bankruptcy laws, see ante, § 10.

Pendency of proceedings as affecting sale of assets, see ante, § 260.

Reversion of property or surplus to debtor on composition, see post, § 438.

Trustee as representative of composition creditors, see ante, § 245.

Composition agreements in general, see "Composition with Creditors."

**§ 374. Right of bankrupt to offer.****§ 375. Proceedings in general.****§ 376. Terms.****§ 377. Acceptance by creditors.****§ 378. Deposit for payments.****§ 379. Application in general.****§ 380. Notice of application.****§ 381. Objections to composition.****§ 382. Hearing and determination of application.****§§ 383-385. Confirmation and proceedings thereon — Distribution.****§ 386. Setting aside.****§ 387. Operation and effect.**

(a) [1878] Where a bankrupt performs the terms of the composition by payment in money, or by his promissory notes to be treated as money, the composition is complete, and the original indebtedness discharged, though the notes are not paid at maturity.—*Deford v. Hewlett*, 49 Md. 51.

(b) [1878] Where, in bankruptcy proceedings, a composition is arranged and confirmed, the case is not thereby taken out of the jurisdiction of the court; and, where the debtor fails to carry out the terms of the composition, a creditor cannot thereupon claim the right to proceed against him for the collection of the whole debt, the bankruptcy proceedings are still pending, and his remedy is to be sought therein, under Act June 22, 1874, § 17, which provides that the provisions of any composition made in pursuance of this section may be enforced by the court, on motion made in a summary manner by any person interested, and on reasonable notice.—*Deford v. Hewlett*, 49 Md. 51.

(c) [1878] The jurisdiction of a federal court over matters of bankruptcy, when once acquired, is not suspended by subsequent proceedings for a composition with the creditors.—*Deford v. Hewlett*, 49 Md. 51.

(d) [1875] A composition under the bankrupt law, without an adjudication and as-



signment, does not operate to displace or dissolve an attachment in a state court, levied within four months of the proceedings in bankruptcy, as against a creditor who took no part in the composition proceedings.—*Miller v. Mackenzie*, 43 Md. 404, 13 N. B. R. 496, 20 Am. Rep. 111.

(e) [1875] About a month after an attachment of the debtor's property, he was adjudged a bankrupt on petition of his other creditors, and at a subsequent meeting of the latter creditors, at which the attaching creditor's claim was properly scheduled, they made a composition of the debts, as provided by Act June 22, 1874, § 17. The attaching creditor was present at such meeting, but took no part, and did not vote upon or sign the resolution for composition. The amount properly due such creditor under the composition proceedings was duly tendered and refused. *Held*, that the debt of such attaching creditor was extinguished by the composition, and his attachment was thereby dissolved.—*Miller v. Mackenzie*, 43 Md. 404, 13 N. B. R. 496, 20 Am. Rep. 111.

(f) [1875] Bankrupt Act 1867, § 14, provides that the assignment of a bankrupt's property shall dissolve any attachment made within four months preceding the commencement of the proceedings. Act Cong. 1874, § 17, amending the former, prescribes the conditions of the composition which may be agreed on by creditors of a bankrupt, which composition shall bind all creditors whose names appear in the statement produced at the meeting of the creditors, at which the composition is adopted. *Held*, that a composition properly adopted and confirmed dissolved an attachment levied by a creditor within four months preceding the bankruptcy proceedings, though no assignment had been made.—*Miller v. Mackenzie*, 43 Md. 404, 13 N. B. R. 496, 20 Am. Rep. 111.

### § 388. New promise to pay debt.

#### *Cross-Reference.*

After discharge of bankrupt, see post, § 434.

### § 389. Pleading.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## V. RIGHTS, REMEDIES, AND DISCHARGE OF BANKRUPT.

### *Cross-References.*

Sale or disposition of property by bankrupt after filing of petition, see ante, § 117.

Bankruptcy as discharge of party from performance of his contract, see "United States," § 73.

Discharge affecting competency of witness, see "Witnesses," §§ 139, 140.

Effect of discharge of indebtedness from legatee to testator, see "Wills," § 759.

### § 389½. Status of bankrupt in general

### § 390. Actions by bankrupt.

#### *Cross-References.*

Rights of action passing to trustee, see ante, § 145.

Rights of trustee as to pending actions, see ante, § 156.

### § 391. Actions against bankrupt.

#### *Cross-References.*

Effect of discharge on pending suits, see post, § 418.

Judgment after adjudication as claim provable against bankrupt's estate, see ante, § 319.

Pleading discharge, see post, § 435.

Remedies of creditors in case of liens and fraudulent transfers, see ante, §§ 209-218.

Rights of trustee as to pending actions, see ante, § 156.

Admissions by bankrupt, see "Evidence," § 232.

Discharge of judgment against bankrupt by accord and satisfaction, see "Accord and Satisfaction," § 18.

Excuse for failure to obtain judgment as prerequisite to creditors' suit, see "Creditors' Suit," § 14.

Notice of fraud as affecting limitations, see "Limitation of Actions," § 100.

Right of bankrupt partner to appear in action against firm, see "Appearance," § 2.

Restraining proceedings in state courts to enforce rights or liens against bankrupt's property, see ante, §§ 211, 215, 217.

Review of proceedings on application for stay, see post, § 446.

(a) [1879] In an action to recover a debt, a plea in abatement, that bankruptcy proceedings were pending at the time of the commencement of the action, is insufficient, it being necessary that they be pending when the plea is pleaded.—*Lewis v. Higgins*, 52 Md. 614.

(b) [1879] Under Rev. St. U. S. § 5024, providing that, on the filing of a petition to have a party adjudicated a bankrupt, the

court shall order the debtor to show cause why it should not be granted, a plea in abatement by defendant in an attachment, of the pendency of involuntary bankruptcy proceedings against him, is insufficient if it does not aver that the bankruptcy court took cognizance of such proceedings, and that they were still pending when the plea was filed.—*Lewis v. Higgins*, 52 Md. 614.

(c) [1879] A plea of pendency of bankruptcy proceedings against defendant, without alleging that the claim has been proved in bankruptcy, is insufficient to abate the action.—*Lewis v. Higgins*, 52 Md. 614.

### § 392. Privilege from arrest.

#### *Cross-References.*

See post, § 435.  
Effect of pendency of proceedings for review, see post, § 444.  
Release from imprisonment, see post, § 393.

### § 393. Release from imprisonment.

#### *Cross-Reference.*

See post, § 435.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### §§ 394-400. Exemptions.

#### *Cross-References.*

Duty of trustee as to payment of taxes on exempt property, see ante, § 346.  
Jurisdiction of courts to determine homestead claim of wife, see ante, § 293.  
Payment of incumbrance on homestead as fraudulent transfer by debtor, see ante, § 178.  
Following decisions of state courts in federal courts, see "Courts," § 366.  
Payment of costs and fees from exemptions, see post, § 475.  
Dissolution of liens on exempt property, see ante, §§ 198, 205.  
Effect of proof of claim against bankrupt's estate, see ante, § 364.  
Lien as affecting amount of creditor's claim against general estate of bankrupt, see ante, § 323.  
Estoppel to claim tax lien, see "Estoppel," § 62.  
Option of creditors to prove claim as unsecured, see ante, § 310.  
Validity of transfers as dependent on property transferred, see ante, § 179.  
Amendment of schedules omitting property, see ante, § 32.  
Conveyance of exempt property as fraudulent transfer, see ante, § 179.  
Waiver operating as security for debt provable against estate, see ante, § 323.  
Estoppel to claim preference against exempt property, see ante, § 311.

Appeal and revision of proceedings, see post, §§ 439-468.

Fees of bankrupt's attorneys, see post, § 469.

Trustees' commissions on proceeds of sale, see ante, § 368.

### §§ 401-403. Death of Bankrupt—Dower and allowances to widow and children.

#### *Cross-References.*

Sale of land as barring dower, see ante, § 268.

Sale of land free from inchoate right of dower, see ante, § 267.

### § 404. Right to discharge in general.

#### *Cross-References.*

Dismissal of petition for want of prosecution, see post, § 413.

Successive proceedings, see ante, § 39.

### § 405. Creditors entitled to oppose discharge.

### §§ 406-409. Grounds for refusal of discharge.

#### *Cross-References.*

Effect of agreements for withdrawal of opposition to discharge, see post, § 415.

Evidence, see post, § 414.

Failure to prosecute petition for discharge, see post, § 413.

Pendency of proceedings to enforce claims against exempt property, see ante, § 398.

Prior proceedings or discharge, see ante, § 404.

Remedies of creditors holding obligations containing waiver of exemptions, see ante, § 399.

Specification of grounds, see post, § 413.

Criminal responsibility, see post, § 485.

#### *Annotation.*

Character of false statement which will prevent a discharge.—20 L. R. A. (N. S.) 1023, note.

Fraud in preventing collection of claim as exempting it from discharge in bankruptcy.—28 L. R. A. (N. S.) 423, note.

Binding effect of judgment refusing discharge.—13 L. R. A. (N. S.) 629; 30 L. R. A. (N. S.) 1164, notes.

### § 410. Time for application.

#### *Cross-Reference.*

Effect of prior proceedings on right to discharge, see ante, § 404.

### § 411. Petition for discharge.

### § 412. Notice of application for discharge.

#### *Cross-References.*

Advances by bankrupt to pay for issuance and publication of notices as costs of administration, see post, § 473.

Notice affecting discharge of debts not duly scheduled, see post, § 425.

Want of personal service of notice as deprivation of property without due process of law, see "Constitutional Law," § 309.

### § 413. Proceedings in opposition of discharge.

#### *Cross-References.*

Creditors entitled to oppose discharge, see ante, § 405.  
Grounds for refusal of discharge, see ante, §§ 406, 407.  
Remedies of creditors holding obligations containing waiver of exemptions, see ante, § 399.  
Taking testimony, see post, § 415.

### § 414. Evidence in proceedings for discharge.

### § 415. Hearing and determination of application for discharge.

#### *Cross-References.*

Remedies of creditors holding obligations containing waiver of exemptions, see ante, § 399.  
Withholding discharge to permit proceedings in state court to enforce liability against exempt property, see ante, § 398.

### § 416. Order of discharge.

### § 417. Revoking discharge.

#### *Cross-Reference.*

Reopening estate, see ante, § 372.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 418. Conclusiveness and effect of discharge in general.

#### *Cross-References.*

Effect of composition, see ante, § 387.  
Effect of reopening estate, see ante, § 372.  
Effect on allowance of exemptions, see ante, § 400.  
Effect on securities and liens, see post, § 433.  
Former discharge as bar to application for discharge, see ante, § 404.  
Remedies of creditors as to fraudulent conveyances, see ante, § 209.  
Creditor's suit, see post, § 433.  
Effect of bankruptcy on pending suits, see ante, § 391.

(a) [1913] The right of creditors to have a fraudulent conveyance by the debtor before his bankruptcy set aside is not extinguished by the debtor's discharge in bankruptcy, in view of Bankr. Act July 1, 1898, §§ 67e and 70e, authorizing the trustee in bankruptcy to avoid such conveyance.—*Blick v. Nimmo*, 121 Md. 139, 88 Atl. 116.

(b) [1913] The discharge of the bankrupt

does not inure to the benefit of his wife, to whom he had fraudulently conveyed his property, or release the property from liability for his debts.—*Blick v. Nimmo*, 121 Md. 139, 88 Atl. 116.

(c) [1909] A discharge in bankruptcy does not prevent the taking of a judgment against the bankrupt, with a perpetual stay of execution, so as to preclude enforcement of the judgment against him, on a bond to dissolve an attachment levied more than four months before the bankruptcy proceedings, for the purpose of enabling the attachment creditor to proceed against the sureties on the bond.—*Kendrick & Roberts v. Warren Bros. Co.*, 110 Md. 47, 72 Atl. 461.

(d) [1845] A discharge under the federal bankrupt acts will not discharge the bankrupt from debts contracted and made payable in a foreign country, where the foreign creditors do not come in and prove their debts under the commission, or receive notice of the proceedings or accept dividends thereunder.—*Lizardi v. Cohen*, 3 Gill 430.

### § 419. Collateral attack on discharge.

### § 420. Debts and liabilities discharged.

#### *Cross-References.*

Claims provable, see ante, §§ 314-320.  
Effect as to co-debtors, guarantors, and sureties, see post, §§ 428-431.  
Effect of composition, see ante, § 387.  
Effect on assignment of wages, see post, § 433.  
Ground for refusal of discharge, see ante, § 407.  
Suspension or stay of pending suits on liabilities dischargeable, see ante, § 391.

#### *Annotation.*

Effect on liability for tort.—1 L. R. A. (N. S.) 202; for assault and battery.—3 L. R. A. (N. S.) 702, notes.

### § 421.—In general.

#### *Cross-References.*

Effect on liabilities of co-debtors, guarantors and sureties, see post, §§ 428-431.  
Effect of discharge of corporation on liability of officers and stockholders, see post, § 432.  
Claims provable, see ante, § 315.  
Stay of proceedings for collection of alimony, see ante, § 391.  
Wife's right to set aside discharge, see ante, § 417.

(a) [1888] In the absence of fraud, a decree of bankruptcy is a conclusive discharge of all debts provable under the law.—*Talbot v. Suit*, 68 Md. 443, 13 Atl. 356.

(b) [1886] Where a subscriber to stock, who is liable for calls in futuro, takes advantage of the bankrupt act, his discharge is no bar to the recovery from him of a call made after such discharge.—*Glenn v. Howard*, 65 Md. 40, 3 Atl. 985.

§ 422.— Taxes.

§ 423.— Judgments in actions for fraud, false pretenses, or false representations.

§ 424.— Judgments for willful or malicious injuries.

*Cross-References.*

See ante, § 398.

Ground for refusal of discharge, see ante, § 407.

(a) [1913] A judgment against a bankrupt for slander is not released by his discharge in bankruptcy.—*Parker v. Brattan*, 120 Md. 428, 87 Atl. 756.

§ 425.— Debts not duly scheduled.

*Cross-References.*

Amendment of schedule, see ante, § 32.

Evidence as to discharge, see post, § 436.

Requisites of schedules in general, see ante, § 3.

§ 426.— Debts created by fraud, embezzlement, misappropriation, or defalcation in official or fiduciary capacity.

*Cross-References.*

Effect of proof of claim, see ante, § 363.

Ground for refusal of discharge, see ante, § 407.

Judgments in actions for fraud, see ante, § 423.

Release from arrest, see ante, § 393.

Stay of contempt proceedings in state court, see ante, § 391.

*Annotation.*

Effect of discharge on claim for services procured by bankrupt's fraud.—34 L. R. A. (N. S.) 894, note.

(a) [1912] Where the narr. declared on defendant's contract to indemnify plaintiff against expenses incurred under plaintiff's agreement guaranteeing defendant's honesty as an insurance agent, and alleged defendant's breach of his agreement with plaintiff to repay what it was required to pay on his account, held that the judgment for plaintiff was not one in an action for fraud, within Bankr. Act, § 17, so that de-

fendant's discharge in bankruptcy was not a valid defense to a scire facias on the judgment.—*American Surety Co. of New York v. Spice*, 119 Md. 1, 85 Atl. 1031.

(b) [1912] Only such debts created by a bankrupt's fraud as were created while he was acting as an officer in a fiduciary capacity are excepted from the operation of a discharge.—*American Surety Co. of New York v. Spice*, 119 Md. 1, 85 Atl. 1031.

(c) [1912] The words "fiduciary capacity," as used in Bankr. Act, § 17, excepting from a discharge in bankruptcy debts created by the debtor's fraud while acting in any fiduciary capacity, refer to technical or express trusts, and do not include conversions or fraud by agents, etc.—*American Surety Co. of New York v. Spice*, 119 Md. 1, 85 Atl. 1031.

(d) [1880] Rev. St. U. S. § 5117, excepting from the operation of a bankrupt's discharge debts created while acting in a fiduciary character, does not include the liability of a subscriber of corporate stock for an amount due on his subscription.—*Morrison v. Savage*, 56 Md. 142. [*Cited and annotated in 42 L. R. A. (N. S.) 1099, on bankruptcy: what relations are fiduciary within provisions relating to discharge.*]

(e) [1880] The fact that money due to a cestui que trust is allowed to remain in a trustee's hands with the consent of the cestui que trust does not change the fiduciary nature of the debt itself. It still remains a debt due by the trustee in his trust character, and will not be affected by his discharge in bankruptcy.—*Crisfield v. State*, 55 Md. 192. [*Cited and annotated in 42 L. R. A. (N. S.) 1097, on bankruptcy: what relations are fiduciary within provisions relating to discharge.*]

(f) [1880] A debt due by an executor to the residuary legatee is not discharged by the former's discharge in bankruptcy, though, by agreement, the amount due remained in the hands of the executor who was to make payments from time to time.—*Crisfield v. State*, 55 Md. 192. [*Cited and annotated in 42 L. R. A. (N. S.) 1097, on bankruptcy: what relations are fiduciary within provisions relating to discharge.*]

**§ 427. Effect of discharge as to co-debtors, guarantors, and sureties.**

*Annotation.*

When will discharge of principal in bankruptcy release surety on a bond given by the principal in an action at law.—14 L. R. A. (N. S.) 508; 28 L. R. A. (N. S.) 234, notes.

**§ 428.—In general.**

**§ 429.—Partnership and individual debts.**

**§ 430.—Guarantors.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 431.—Sureties.**

*Cross-References.*

Claims against bankrupt as surety, see ante, § 421.

Claims of sureties against bankrupt principal, see ante, § 421.

(a) [1910] Under Bankr. Act July 1, 1898, c. 541, § 67f, 30 Stat. 565 (U. S. Comp. St. 1901, p. 3450), making all levies, attachments, or other liens obtained against a person who is insolvent at any time within four months prior to the filing of a petition in bankruptcy void in case he is adjudged a bankrupt, the adjudication of a defendant in attachment a bankrupt, and his discharge in bankruptcy, in proceedings begun within four months after the issuance of the attachment, discharges the surety on the bond filed to dissolve the attachment before the commencement of the proceedings in bankruptcy, since the bond stands in the place of the attachment, and, the attachment being void, the bond also fell.—*Crook-Horner Co. of Baltimore City v. Gilpin*, 112 Md. 1, 75 Atl. 1049.

**§ 432. Effect of discharge of corporation on liabilities of officers and stockholders.**

*Cross-References.*

Effect of bankruptcy of corporation on proceedings for judgment and execution against corporation, see ante, § 391.

Effect of composition, see ante, § 387.

Effect of discharge of officers and stockholders, see ante, § 421.

**§ 433. Effect of discharge as to securities and liens.**

*Cross-References.*

Dissolution of liens by adjudication, see ante, §§ 198-203.

Effect of bankruptcy on pending suits, see ante, § 391.

Effect of discharge as to co-debtors, guarantors, and sureties, see ante, §§ 426-431.

Effect of discharge on pending suits, see ante, § 418.

Enforcement of liens against property subject to jurisdiction of court of bankruptcy, see ante, §§ 214-217.

Liens on exempt property, see ante, § 398.

Proof of secured claims, see ante, § 310.

Securities containing waiver of exemptions, see ante, § 399.

Validity of liens, see ante, §§ 187-196.

As to sureties on bond to discharge garnishment, see ante, § 431.

Liens on exempt property, see ante, § 398.

Vacation of stay of attachment on discharge, see ante, § 391.

Validity of liens, see ante, § 195.

Remedies of mortgagees, see ante, § 213.

Costs as claim against estate, see ante, § 317.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 434. New promise to pay debt discharged.**

*Cross-References.*

See ante, § 421.

Evidence of new promise, see post, § 436.

New promise to pay debt discharged by composition agreement, see ante, § 388.

Questions for jury, see post, § 437.

*Annotation.*

Expression of hope or expectation as a new promise which will revive debt after discharge in bankruptcy.—38 L. R. A. (N. S.) 581, note.

Effect of partial payment to revive debt after discharge is bankruptcy.—26 L. R. A. (N. S.) 274, note.

(a) [1913] The moral obligation of a bankrupt to pay his debts will support a new promise to pay a provable debt, though the promise be made between the adjudication in bankruptcy and his discharge.—*Old Town Nat. Bank of Baltimore v. Parker*, 121 Md. 61, 87 Atl. 1105.

(b) [1821] A discharge in bankruptcy merely bars an action on the debt, and does not extinguish it, and the moral obligation resting on a debtor, who has been discharged, to pay his debts in full, is a sufficient consideration for his promise to pay a debt discharged.—*Yates v. Hollingsworth*, 5 H. & J. 216.

(c) [1821] There can be no recovery upon a conditional promise to pay a debt from which defendant has been discharged in bankruptcy, unless it is shown that the con-

dition has been performed or the contingency has happened, in which case it is binding.—Yates v. Hollingsworth, 5 H. & J. 216.

### § 435. Pleading discharge.

#### *Cross-References.*

See ante, § 433.

Collateral attack on discharge, see ante, § 419.

Dismissal as to bankrupt co-defendant, on court's own motion, see "Dismissal and Nonsuit," § 65.

Pleading new promise, see ante, § 434.

(a) [1902] A discharge in insolvency is of no avail to prevent judgment by default unless it is pleaded in the manner and form required by Acts 1894, c. 631, § 18f (Baltimore county local law), governing the entry of judgments by default, and requiring pleas to be verified under certain conditions of plaintiff's pleadings, and is also pleaded within the time prescribed by the court rules adopted pursuant to such act for filing of pleas in general.—Griffith v. Adams, 95 Md. 170, 52 Atl. 66.

### § 436. Evidence as to discharge or new promise.

#### *Cross-Reference.*

New promise to pay debt discharged, see ante, § 434.

(a) [1910] One relying on his discharge in bankruptcy to defeat a claim omitted from his schedule has the burden of proving that the creditor had notice or actual knowledge of the proceedings in bankruptcy.—George F. Sloan & Bro. v. Grollman, 113 Md. 192, 77 Atl. 577.

(b) [1910] A bankrupt relying on his discharge in bankruptcy to defeat a claim omitted from his schedule of claims held, under the evidence, not to sustain the burden of proving that the creditor had notice, or actual knowledge, of the proceedings in bankruptcy.—George F. Sloan & Bro. v. Grollman, 113 Md. 192, 77 Atl. 577.

(c) [1821] There can be no recovery upon a conditional promise to pay a debt from which defendant has been discharged in bankruptcy, unless it is shown that the condition has been performed or the contingency has happened, in which case it is

binding.—Yates v. Hollingsworth, 5 H. & J. 216.

### § 437. Questions for jury as to discharge or new promise.

(a) [1913] Where a witness for plaintiff testified that the bankrupt made an express new promise to pay the debt, between the adjudication of bankruptcy and the discharge, it was error for the court to rule that, as a matter of law, the evidence was insufficient to entitle plaintiff to recover.—Old Town Nat. Bank of Baltimore v. Parker, 121 Md. 61, 87 Atl. 1105.

### § 438. Reversion of property or surplus to debtor on dismissal, composition, or discharge.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## VI. APPEAL AND REVISION OF PROCEEDINGS.

#### *Cross-References.*

Review by judge of referee's determination on application for discharge, see ante, § 415.

Review by judge of referee's determination on claims against estate, see ante, § 342½.

Review by judge of referee's determination on petition in bankruptcy, see ante, § 98.

Review by judge of referee's proceedings in general, see ante, § 228.

Review of actions by or against trustees in general, see ante, § 306.

### (A) SUPERINTENDENCE AND REVISION.

#### *Cross-Reference.*

Costs on petition for revision, see post, § 478.

### § 439. Nature and scope of remedy.

### § 440. Appeal or revision as proper remedy.

#### *Cross-References.*

See ante, § 339.

Nature and form of remedy by appeal, see post, § 449.

Nature and scope of remedy by revision, see ante, § 439.

### § 441. Jurisdiction of Circuit Court of Appeals.

### § 442. Presentation and reservation in lower court of grounds of review.

#### *Cross-Reference.*

On appeal, see post, § 458.

**§ 443. Right of review.***Cross-Reference.*

Right to prosecute appeal, see post, § 457.

**§ 444. Petition, notice, and proceedings thereon.***Cross-References.*

Appeal treated as petition for revision, see ante, § 440.

Taking and perfecting appeal, see post, § 461.

**§ 445. Hearing.****§ 446. Review.**

(a) [1806] Where a creditor claims a preference in the payment of a claim against a bankrupt, and it is allowed in the court below, the decree must be affirmed on appeal, if it do not appear by the record that there are other creditors whose claims have been proved and allowed, nor to what proportion the appellee is entitled, if not to a preference.—Winchester v. Brooke, 2 H. & J. 1.

**§ 447. Determination and disposition of matter.****§ 448. Review of decisions by Supreme Court.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**(B) APPEAL.***Cross-References.*

Costs on appeal, see post, § 479.

In actions by or against bankrupt, see ante, §§ 156, 391.

**§ 449. Nature and form of remedy.***Cross-References.*

Appeal distinguished from revision, see ante, § 439.

Appeal or revision as proper remedy, see ante, § 440.

Review of decision on petition for revision, see ante, § 448.

**§§ 450-453. Appellate jurisdiction.***Cross-References.*

Appeal or revision as proper remedy, see ante, § 440.

Revisory power, see ante, § 441.

Mode of review of decision on petition for revision, see ante, § 448.

Review of decisions of state courts involving bankruptcy acts, see "Courts," § 394.

**§§ 454, 455, 456. Decisions reviewable.***Cross-Reference.*

Appeal or revision as proper remedy, see ante, § 440.

**§ 457. Right of review.***Cross-References.*

See post, § 465.

Right to prosecute petition for revision, see ante, § 443.

**§ 458. Presentation and reservation in lower court of grounds of review.***Cross-Reference.*

On petition for revision, see ante, § 442.

**§ 459. Certification of questions to Supreme Court.****§ 460. Parties.***Cross-Reference.*

Parties to petition for revision, see ante, § 444.

**§ 461. Taking and perfecting.***Cross-Reference.*

Proceedings for revision, see ante, § 444.

**§ 462. Effect of appeal and stay of proceedings.***Cross-Reference.*

Effect of petition for revision, see ante, § 444.

**§ 463. Record.****§ 464. Assignments of error.****§ 465. Dismissal.****§ 466. Hearing.****§ 467. Review.***Cross-References.*

Of discretion as to reopening bankrupt's estate, see ante, § 372.

On petition for revision, see ante, § 446.

(a) [1806] Where a creditor claims a preference in the payment of a claim against a bankrupt, and it is allowed in the court below, the decree must be affirmed on appeal, if it do not appear by the record that there are other creditors whose claims have been proved and allowed, nor to what proportion the appellee is entitled, if not to a preference.—Winchester v. Brooke, 2 H. & J. 1.

**§ 468. Determination and disposition of cause.***Cross-Reference.*

On petition for revision, see ante, § 448.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## VII. COSTS AND FEES.

### *Cross-References.*

Compensation of referees, see ante, § 223.  
 Compensation of trustee, see ante, § 368.  
 Costs, fees and expenses as preferred claims, see ante, § 347.  
 Costs incurred before filing of petition as claims provable against bankrupt's estate, see ante, § 317.  
 Costs of debtor's motion to set aside judgment obtained prior to discharge, see ante, § 433.  
 Costs of sale of exempt property, see ante, § 400.  
 Payment of fees and expenses of witnesses, see ante, § 239.  
 Subjection of property assigned for creditors to expenses of assignment proceedings, see ante, § 173.  
 Subjection of property in custody of state court to costs of proceedings in that court, see ante, § 144.

### § 469. Power to award costs.

#### *Cross-Reference.*

Power of receiver to allow counsel fees, see ante, § 114.

### §§ 470-473. Persons entitled to costs.

#### *Cross-References.*

Attorney's fees, see post, § 482.  
 Power to award costs, see ante, § 469.

### § 474. Persons, property, or funds liable for costs.

#### *Cross-References.*

Exemptions, see ante, § 398.  
 Referee's commissions on incumbered property or proceeds thereof, see ante, § 223.  
 Trustee's commissions on incumbered property or proceeds thereof, see ante, § 368.  
 Liability of third person's property for expenses of unauthorized receivership, see "Receivers," § 200.

### § 475. Security for costs.

#### *Cross-References.*

Deposit in composition proceeding, see ante, § 378.  
 Following state statutes and practice in federal courts, see "Courts," § 357.  
 Security under state laws in actions by or against trustee, see "Costs," § 109.

### § 476. Amount and items of costs.

#### *Cross-References.*

Attorney's fees, see post, § 482.  
 Clerks, marshals and receivers, see post, §§ 483, 484.  
 Witness' fees on examination, see ante, § 239.

### § 477. Taxation of costs.

### § 478. Costs on petition for revision.

#### *Cross-Reference.*

Authority of trustee to pay costs, see ante, § 272.

### § 479. Costs on appeal.

### § 480. Payment and remedies for collection of costs.

### § 481. Fees of officers in general.

### § 482. Fees of attorneys.

#### *Cross-References.*

Allowance of fees of counsel for trustee, see ante, § 272.  
 As preferred claims, see ante, § 347.  
 As provable claims against estate, see ante, § 317.  
 Payment of dividend as affecting attorney's lien, see ante, § 360.  
 Payment of fees in contemplation of bankruptcy, see ante, § 170.  
 Persons entitled to costs, see ante, §§ 471-473.  
 Power of court to fix fees for procuring exemptions, see ante, § 469.  
 Power of receiver to allow counsel fees, see ante, § 114.

### § 483. Fees of clerks.

#### *Cross-Reference.*

Necessity of deposit or payment of filing fee, see ante, § 45.

### § 484. Fees of marshals and receivers.

#### *Cross-Reference.*

Authority of court to compensate receiver, see ante, § 469.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## VIII. OFFENSES AGAINST BANKRUPT LAWS.

### *Cross-References.*

Ground for refusal to discharge bankrupt, see ante, § 408.  
 Summary proceedings to compel bankrupt to surrender property, see ante, § 136.  
 Conspiracy to commit illegal act, see "Conspiracy," § 28.

### § 485. Concealment of property by bankrupt.

### § 486. False oath or account.

#### *Cross-References.*

Ground of refusal of discharge, see ante, § 408.  
 Indictment, see post, § 494.

### § 487. Receiving property from bankrupt.

### §§ 488, 489, 490. (Omitted from the classification used herein.)

### § 491. Defenses.

### § 492. Persons liable.

### § 493. Jurisdiction.

### § 494. Indictment or information.



**§ 495. Evidence.***Cross-Reference.*

Privilege of witness examined in bankruptcy proceeding, see ante, § 242.

**§ 496. Trial.****§ 497. Sentence and punishment.***Cross-Reference.*

Punishing contempt in refusal to surrender property, see ante, § 136.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in

Decennial and Key Number Digests, and references therein to Century Digest.

**BANKS.***Cross-References.*

Of natural lakes and ponds, see "Waters and Water Courses," § 111.

Of navigable waters, rights of riparian owners, see "Navigable Waters," § 41.

Of non-navigable streams, see "Waters and Water Courses," §§ 90-98.

*Annotation.*

1 Words and Phrases, § 682.

**BANKS AND BANKING.***Scope-Note.*

[INCLUDES the regulation and conduct of the business of dealing in money by receiving and repaying deposits and collections, making loans, discounts, or other investments, and issuing bills, notes, etc., for purposes of particular transactions or for general circulation, whether these functions, or any of them, are exercised by individuals or by corporations, either ordinary banks of deposit, discount, and circulation, or savings banks, or loan, trust, and investment companies; organization, powers, and liabilities of such corporations, and rights and liabilities of their members and officers; and mutual rights, duties, and liabilities of bankers, banks, or other such institutions, and those dealing with them.

[EXCLUDES co-operative banking associations formed for mutual benefit only (see "*Building and Loan Associations*"); bank checks in hands of third persons (see "*Bills and Notes*"); counterfeiting bank notes (see "*Counterfeiting*"); and taxation of capital stock, or property of banks (see "*Taxation*"). For complete list of matters excluded, see cross-references, post.]

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- Right of member of insolvent building and loan association to full amount of check given him on balancing his account and canceling stock, see "Building and Loan Associations," § 42.
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- Right of officer to act as trustee in deed of trust to bank, see "Mortgages," § 24.
- Right of stockholder to act as trustee in deed of trust to bank, see "Mortgages," § 24.
- Right of sureties of defaulting cashier to subrogation, see "Subrogation," § 7.
- Right of trust company to become surety on attachment bonds, see "Attachment," § 133.
- Rights as assignee or pledgee of bill of lading, see "Carriers," § 58.
- Right to attachment in action against directors for receiving deposit knowing bank to be insolvent, see "Attachment," § 7.
- Right to interest on money advanced to receiver of bank, see "Interest," § 10.
- Right to stop payment of check as dependent on right to rescind contract under which check was given, see "Contracts," § 259.
- Security for costs in actions by national bank receivers, see "Costs," §§ 109, 110.
- Self-executing provisions of constitution relating to insolvency, see "Constitutional Law," §§ 33, 34.
- Set-off by depositor against assignee of insolvent bank or banker, see "Assignments for Benefit of Creditors," § 186.
- Set-off by depositor against debts due bankrupt bank, see "Bankruptcy," § 154.
- Set-off of deposit against trustee in bankruptcy, see "Bankruptcy," § 154.
- Set-off of deposit as preference preventing allowance of claim against bankrupt's estate, see "Bankruptcy," § 311.
- Special charter as affected by constitution prohibiting special acts, see "Constitutional Law," § 55.
- Statute empowering comptroller to appoint receivers for insolvent national banks as vesting judicial power, see "Constitutional Law," § 55.
- Statute of frauds as protection to officer making false representations to depositor concerning condition of bank, see "Frauds, Statute of," § 38.
- Subject and title of acts relating to banks and deposits, see "Statutes," §§ 113, 118.
- Subrogation of stockholder to creditors' rights on payment of statutory liability, see "Subrogation," § 3.
- Survival of cause of action for negligence on death of officer, see "Abatement and Revival," § 55.
- Suspension of bank as excusing demand in order to start running of interest on deposit, see "Interest," § 46.
- Taxation of banks and bank property, see "Municipal Corporations," § 966; "Schools and School Districts," § 102; "Taxation," §§ 10-12, 47, 126-131, 228, 280-282, 386, 522.
- Testamentary character of gift or transfer of bank deposit, see "Wills," §§ 89, 90.
- Testimony as to transactions with persons since deceased, see "Witnesses," §§ 133, 139, 140, 142, 149, 166.
- Time for presenting checks for payment in order to bind drawer, see "Bills and Notes," § 404.
- Title to stolen bank bill acquired by bona fide purchaser, see "Bills and Notes," § 363.
- Transfer by bank of draft received for deposit, see "Bills and Notes," § 370.
- Transfer by holder of certificate of deposit in payment of debt, see "Payment," § 18.
- Transfer of trade-name of bank, see "Trade-Marks and Trade-Names," § 33.
- Validity of agreement to prove loss of bank book to satisfaction of trustees or treasurer, see "Contracts," § 127.
- Validity of contract in violation of banking act, see "Contracts," § 105.
- Validity of note made to deceive state officer, see "Bills and Notes," § 106.
- Validity of statute authorizing increase of stock as affected by number of votes therefor, see "Statutes," § 21.
- Verification of claim of bank against decedent's estate, see "Executors and Administrators," § 227.
- Vesting of depositor's title in receiver as affecting right of bank to apply deposit on note, see "Receivers," § 70.
- What constitutes check, see "Bills and Notes," § 1.
- What law governs as to liability on certificate of deposit transferred under gambling contract, see "Gaming," § 2.

## I. CONTROL AND REGULATION IN GENERAL.

### *Cross-References.*

- Of loan, trust and investment companies, see post, § 310.
- Of national banks, see post, § 233.
- Appointment of officers in state department of banking, see "States," § 47.
- Validity of note made to deceive state officer, see "Bills and Notes," § 106.

### § 1. Right of banking in general.

#### *Cross-Reference.*

- Stockholder's liability depending on determination of question, see post, § 44.

### § 2. What are banks.

### § 3. Power to control and regulate.

### § 4. Constitutional and statutory provisions.

#### *Cross-References.*

- Construction by United States courts as binding on state courts, see "Courts," § 97.
- Delegation of legislative power to bank examiner, see "Constitutional Law," § 62.
- Denial of equal protection of the laws, see "Constitutional Law," §§ 230, 240.
- Deprivation of property without due process of law, see "Constitutional Law," §§ 296, 299.
- Grant of judicial power to state board, see "Constitutional Law," § 80.
- Laws relating to payment and cancellation of lost certificates of deposit as impairing obligation of contracts, see "Constitutional Law," § 154.
- Power of county clerk to publish banking law, see "Counties," § 82.
- Preference to non-stockholding savings bank depositors as class legislation, see "Constitutional Law," § 208.
- Self-executing constitutional provisions, see "Constitutional Law," §§ 33, 34.
- Subject and title of acts relating to banks and deposits, see "Statutes," §§ 113, 118.
- Validity of statute authorizing increase of stock as affected by number of votes therefor, see "Statutes," § 21.

### § 5. Charter provisions.

### § 6. Authority or license to do business.

#### *Cross-References.*

- Constitutional and statutory provisions, see ante, § 4.
- License fees and taxes, see post, § 12.
- Mandamus to compel issuance, see "Mandamus," § 87.

### §§ 7-11. Unauthorized banking.

#### *Cross-Reference.*

- Penalties for violation of regulations, see post, § 19.

### § 12. License fees and taxes.

#### *Cross-References.*

- Authority or license to do business, see ante, § 6.
- Act providing for license tax on banks as unequal taxation because of non-applicability of act to national banks, see "Licenses," § 7.
- Denial of equal protection of the laws, see "Constitutional Law," § 230.
- Double taxation, see "Taxation," § 47.
- Exemptions, see "Licenses," § 19.
- License tax on trust company dealing in real estate, see "Brokers," § 3.
- Property taxable by municipal corporations, see "Municipal Corporations," § 966.

### § 13. Limitation of indebtedness.

### § 14. Reserves.

### § 15. Safety funds and deposits of securities.

- (a) Where a bank was incorporated under a general law as a savings bank, and, in compliance with a later special act (Acts 1904, c. 268) authorizing it to do a general banking business, deposited bonds with the state treasurer as security for its depositors, the deposit was a trust fund, the depositors sustaining the relation of cestuis que trustent, and a later statute repealing the special act did not divest the interest of the depositors.—*Vandiver v. Fidelity Savings Bank of Frostburg*, 120 Md. 619, 87 Atl. 1086.

### § 16. Reports and statements.

#### *Cross-Reference.*

- Actionable deceit, see "Fraud," §§ 1-80.

### § 17. Public examiners.

#### *Cross-Reference.*

- Delegation of legislative power to bank examiners, see "Constitutional Law," § 62.

### § 18. Foreign banks.

#### *Cross-References.*

- National banks as foreign corporations, see post, § 232.
- What are banks, see ante, § 2.

### § 19. Penalties for violations of regulations.

#### *Cross-Reference.*

- Subject and title of act relating to penalty for receiving deposit while insolvent, see "Statutes," § 118.

### § 20. Offenses by banks or bankers.

#### *Cross-References.*

- Civil liability therefor, see post, § 82.

Constitutional and statutory provisions, see ante, § 4.

Criminal responsibility of bank officers and agents, see post, §§ 61, 62, 84, 85.

Unauthorized banking, see ante, § 11.

## § 21. Offenses by persons dealing with banks.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## II. BANKING CORPORATIONS AND ASSOCIATIONS.

### *Cross-References.*

Loan, trust and investment companies, see post, §§ 310-317.

National banks, see post, §§ 232-288.

Savings banks, see post, §§ 289-309.

### (A) INCORPORATION, ORGANIZATION, AND INCIDENTS OF EXISTENCE.

#### *Cross-References.*

Of loan, trust and investment companies, see post, § 312.

Of national banks, see post, §§ 236, 237.

Best and secondary evidence in criminal prosecution, see "Criminal Law," § 400.

De facto banks, see "Corporations," § 28.

Estoppel to allege or deny existence, see "Corporations," § 34.

## § 22. Nature and formation in general.

(a) The state, by granting a charter conferring on a savings institution, within the city of Baltimore, the power to receive deposits, and discount paper, does not violate its pledge under the acts of 1813, c. 122, and acts of 1831, c. 131, providing that no charter with these powers—including especially the power to issue negotiable notes—should be granted to any corporation in Baltimore city organized at any time prior to January 1st, 1845.—*Duncan v. Maryland Savings Institution*, 10 G. & J. 299.

## § 23. Incorporation.

## § 24. Partnerships and joint-stock companies.

## § 25. Special charters or acts.

### *Cross-References.*

Renewal, see post, § 30.

Prohibition of special acts, see "Constitutional Law," § 24.

(a) The state, by granting a charter conferring on a savings institution within the City of Baltimore power to receive deposits and discount paper, does not violate its pledge to the banks of that city by Acts

1813, c. 122, and Acts 1831, c. 131, providing that no charter should be granted to such an institution within those limits at any time prior to January 1, 1845, empowering the corporation to issue negotiable notes.—*Duncan v. Maryland Sav. Inst.*, 10 G. & J. 299.

## § 26. General laws.

## § 27. Defective incorporation or organization.

### *Cross-Reference.*

De facto banks, see "Corporations," § 28.

## § 28. Evidence of existence.

### *Cross-Reference.*

Best and secondary evidence in criminal prosecutions, see "Criminal Law," § 400.

(a) A bank charter granted by the governor of a state, reciting his authority, by the laws of that state, to make such grants, and authenticated by the great seal thereof, in the absence of proof that its laws did not warrant such an exercise of authority on the part of the governor, is sufficient evidence, per se, to prove the existence of such bank.—*Agnew v. Bank of Gettysburg*, 2 H. & G. 478.

## § 29. Term of existence.

### *Cross-Reference.*

Special charter as effected by Constitution prohibiting special acts, see "Constitutional Law," § 24.

## § 30. Extension or renewal.

### *Cross-Reference.*

Special charters or acts, see ante, § 25.

## § 31. Name.

### *Cross-Reference.*

Transfer of trade-name of bank, see "Trade-Marks and Trade-Names," § 33.

(a) Code 1888, art. 23, § 83, requires that the certificate of incorporation of a corporation reincorporating under that article shall state the proposed name of the new corporation and the former name of said corporation. *Held*, that where the W. Savings Institution reincorporated as the W. Savings Bank, the alteration of the name did not affect the validity of the new corporation.—*Erb v. Grimes*, 94 Md. 92, 50 Atl. 397. (See Code 1911, art. 11, §§ 31 *et seq.*; art. 23, § 3.)

(b) Code 1888, art. 23, requires that the

name of each corporation formed under that article shall include the name of the county or city in which it is formed. *Held*, that the name the "Westminster Savings Bank" was a sufficient compliance with the law, without including Carroll county, in which Westminster lies; the name of such a well-known city serving the purpose of the law to give notice of the location of the corporation.—*Erb v. Grimes*, 94 Md. 92, 50 Atl. 397. (See Code 1911, art. 11, §§ 31 *et seq.*; art. 23, § 3.)

### § 32. Location and place of business.

### § 33. Branches.

### § 34. Constitution and by-laws.

#### *Cross-Reference.*

By-laws of savings bank as part of contract with depositor, see post, § 300.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### (B) CAPITAL, STOCK, AND DIVIDENDS.

#### *Cross-References.*

Of national banks, see post, §§ 241-245.

Power of bank to purchase and hold its own stock, see post, § 91.

Power of bank to purchase and hold stock in other banks or corporations in general, see post, § 92.

Stock as security for loan by bank to stockholders, see post, § 180.

Duty as to payment of taxes on shares and dividends, see "Taxation," § 522.

Liability of capital and stock to taxation, see "Taxation," § 127.

Liability of dividends to taxation, see "Taxation," § 129.

Liability of shares of stockholders to taxation, see "Taxation," § 128.

Mode of assessment, see "Taxation," § 386.

Place of taxation, see "Taxation," §§ 281, 282.

Property taxable by municipal corporations, see "Municipal Corporations," § 966.

### § 35. Statutory provisions.

#### *Cross-Reference.*

Validity of statute authorizing increase as affected by number of votes therefor, see "Statutes," § 21.

### § 36. Amount of capital and shares.

### § 37. Increase of capital stock.

#### *Cross-References.*

Liability of stockholders to creditors, see post, § 47.

Validity of statute authorizing as affected by number of votes therefor, see "Statutes," § 21.

### § 38. Reduction of capital stock.

### § 39. Subscription to and issue of stock.

#### *Cross-References.*

See "Fraud," § 28.

Collection of unpaid subscriptions to pay debts of bank, see post, §§ 57, 58.

Effect of adjudication of insolvency as to enforcement of stock assessment, see post, § 73.

### § 40. Transfer of stock.

#### *Cross-References.*

Effect on liability for debts and acts of bank, see post, § 48.

Stock subject to lien, see post, § 42.

Concealment of cause of action against cashier as affecting limitations as to fraud in purchase of stock by him, see "Limitation of Actions," § 104.

Pledge of stock, see "Corporations," § 123.

(a) Where a bank permits a transfer of its stock to be made under a power of attorney, it takes the risk of its validity. It is liable in case of a forged power, or of one executed by a feme covert or an infant.—*Chew v. Bank of Baltimore*, 14 Md. 299.

(b) A bank may refuse to recognize a power of attorney for transfer of the stock of one of its stockholders if not satisfied of its entire genuineness, and may require the personal attendance of the party to determine such matters of fact as may give rise to dispute.—*Chew v. Bank of Baltimore*, 14 Md. 299.

(c) If a bank's charter provides that, unless a stockholder discharges his debt to the bank, his stock cannot be transferred, the purchaser of stock from one indebted to the bank takes only an equitable assignment subject to the rights of the bank under its charter.—*Farmers' Bank of Maryland v. Iglehart*, 6 Gill 56. [*Cited and annotated in 39 L. R. A. (N. S.) 294, 301, on priority as between lien of corporation and pledgee or purchaser of stock.*]

(d) In the absence of fraud and collusion, a transfer of stock directed and managed by the president and cashier who made use of the usual forms and ceremonies is binding on the bank.—*Hodges v. Planters' Bank*, 7 G. & J. 306.

### § 41. Profits and dividends.

#### *Cross-Reference.*

Liability of dividends to taxation, see "Taxation," § 129.

## § 42. Lien of bank on stock or dividends.

### Cross-References.

Effect of failure to organize, see post, § 68.

Statutory provisions, see ante, § 35.

(a) The charter of a bank provided that its shares of stock "shall be transferable on the books of the corporation only according to such rules as shall be established by the president and directors, but all debts actually due and payable to the corporation by a stockholder requesting a transfer must be satisfied before such transfer shall be made, unless the president and directors shall direct to the contrary." *Held*, that this lien on the stock is not waived by the form of a certificate for stock declaring that the stockholder "is entitled" to — shares of stock, "transferable only at said bank, personally or by attorney, on surrender of this certificate."—*Reese v. Bank of Commerce*, 14 Md. 271, 74 Am. Dec. 536. [*Cited and annotated in 39 L. R. A. (N. S.) 294, 302, on priority as between lien of corporation and pledgee or purchaser of stock.*]

(b) In an action by a bank to enforce its lien against the stock of a shareholder for the payment of his debt, the court is under no obligation, when decreeing a sale thereof, to appoint a day within which the defendant may redeem.—*Reese v. Bank of Commerce*, 14 Md. 271, 74 Am. Dec. 536.

(c) Under a charter of a bank providing that the stock shall be liable for all debts due the corporation by a stockholder, the lien attaches for balances due the bank for overdrafts, but not on notes on which the stockholder may be a maker or indorser which are not due at the time the transfer is made.—*Reese v. Bank of Commerce*, 14 Md. 271, 74 Am. Dec. 536. [*Cited and annotated in 39 L. R. A. (N. S.) 294, 302, on priority as between lien of corporation and pledgee or purchaser of stock.*]

(d) Under the charter of a bank providing that the stock shall be transferred according to the rules of the corporation, and that all debts due the corporation by a stockholder must be first satisfied, an assignee of a stockholder takes the stock subject to any

lien the bank may have under its charter.—*Reese v. Bank of Commerce*, 14 Md. 271, 74 Am. Dec. 536. [*Cited and annotated in 39 L. R. A. (N. S.) 294, 302, on priority as between lien of corporation and pledgee or purchaser of stock.*]

(e) The incorporating act of a bank declared that all debts due to a bank by its stockholders should be discharged before a transfer of stock could be made. *Held*, that the act gave to the bank a mortgage or pledge of the stock, which it could enforce by a sale, as the act did not prohibit such a transfer by the bank.—*In re Farmers' Bank of Maryland*, 2 Bland 394.

(f) Where a bank holding stock of a deceased stockholder for his indebtedness to the bank refuses to sell the stock, the court, in a suit by an administrator of the stockholder, will order the stock to be sold, and the proceeds applied to the satisfaction of the debt.—*In re Farmers' Bank of Maryland*, 2 Bland 394.

## (C) STOCKHOLDERS.

### Cross-References.

Loans by bank to stockholders, see post, § 180.

Of loan, trust, and investment companies, see post, § 313.

Of national banks, see post, §§ 246, 248-250.

Of savings banks, see post, § 293.

Right to act as trustees in deed of trust to bank, see "Mortgages," § 24.

## § 43. Rights and liabilities as to bank.

## § 44. Constitutional and statutory provisions.

### Cross-References.

Change of remedy to enforce liability of stockholders as deprivation of property without due process of law, see "Constitutional Law," § 307.

Creation of stockholders' liability as deprivation of property without due process of law, see "Constitutional Law," § 299.

## § 44½. Meetings.

## § 45. Suing or defending on behalf of bank.

### Cross-References.

Enforcement of liabilities of officers, see post, § 54.

Rights and liabilities of stockholders as to bank in general, see ante, § 43.



## § 46. Liability for debts and acts of bank.

### Cross-References.

Change of remedy to enforce liability of stockholders as deprivation of property without due process of law, see "Constitutional Law," § 307.

Creation of liability as deprivation of property without due process of law, see "Constitutional Law," § 299.

Liability as partners where organization is defective, see "Partnership," § 41.

Privity of corporations and corporate officers and stockholders, see "Judgment," § 701.

Subrogation of stockholder to creditors' rights on payment of statutory liability, see "Subrogation," § 3.

## § 47.— Nature and extent.

### Cross-References.

Constitutional and statutory provisions, see ante, § 44.

Effect of judgment of reorganization, see "Judgment," § 707.

(a) In an action to recover from a bank in B. a sum of money in gold deposited in the bank, the plaintiff introduced in evidence an entry in his bank book as follows: "In 1861, Dec. 30. Cash (coin) \$3,000." *Held*, that evidence was admissible to prove that, according to the general and well-known usage of the banks in B. existing before and at the time of the deposit in question and ever since, the entry offered in evidence imported an agreement on the part of the bank to return the deposit in kind, and that by usage the striking of balances subsequently to such entry, did not work any change in the character of the particular deposit, where the balances were always more than the amount of the deposit.—*Chesapeake Bank v. Swain*, 29 Md. 483. [*Cited and annotated* in 21 L. R. A. 445, on banking customs; in 29 L. R. A. 523, on special obligations for payment in gold or silver.]

(b) Where money deposited by one in a bank is used by the latter in payment of notes issued by it, and commonly called "counter tickets," the bank is liable to the depositor for the full amount deposited.—*City Bank v. Bateman*, 7 H. & J. 104.

## § 48.— Effect of transfer of stock.

(a) Under act 1852, c. 338, § 9, relative to the individual liability of stockholders, the stockholders are not liable for debts contracted by the company subsequent to their

parting with their stock.—*Matthews v. Albert*, 24 Md. 527. (See Code, art. 11, § 69.)

## § 49.— Actions and proceedings to enforce.

### Cross-References.

Compromise of doubtful claims by receiver, see post, § 77.

Constitutional and statutory provisions, see ante, § 44.

Conditions precedent, see ante, § 47.

Enforcement in action against consolidated corporation, see post, § 67.

Appealability of judgments as dependent on their finality, see "Appeal and Error," § 77.

By foreign receiver, see "Receivers," § 210.

Change of remedy to enforce liability of stockholders as deprivation of property without due process of law, see "Constitutional Law," § 307.

Default judgment, see "Judgment," § 94.

Effect as *lis pendens*, see "Lis Pendens," § 8.

Law providing for enforcement of liability by receiver as impairing vested right, see "Constitutional Law," § 106.

Settlement and dismissal of suit brought by one creditor in behalf of himself and others, see "Dismissal and Nonsuit," § 11.

Testimony as to transactions with persons since deceased, see "Witnesses," § 140.

Limitations in general, see "Limitation of Actions," §§ 2, 21, 34, 58, 66, 122.

(a) Balto. City Code, § 313, requires plaintiff to file with his declaration an affidavit stating the true amount defendant is indebted to him over and above all discounts, and to file the bond, bill of exchange, note, or other writing or account by which defendant is so indebted; or, if the action be founded on a verbal or implied contract, to file a statement of the particulars of defendant's indebtedness thereunder. *Held*, in an action to enforce the liability of a stockholder in a banking corporation under Acts 1892, p. 156, c. 109, § 851, that the affidavit, which was accompanied by an account for money due plaintiff as depositor with the corporation of which defendant was stockholder, setting forth the dates and amounts of all deposits made and the aggregate thereof, with credits for money withdrawn, was sufficient without filing plaintiff's bank book or defendant's certificates of stock.—*Coulbourn Bros. v. Boulton*, 100 Md. 350, 59 Atl. 711. (See Code, art. 11, § 69.)

(b) Where defendant indorsed the note of a bank in which he was a stockholder, and

on the insolvency of the bank was required by order of court to pay a sum greater than his statutory liability as a stockholder, he thereby became a creditor of the bank, and as such was entitled to plead such payment as an equitable set-off to an action by a creditor of the bank to enforce his liability as a stockholder.—*Strauss v. Denny*, 95 Md. 690, 53 Atl. 571.

(c) Acts 1896, c. 349 (see Code 1911, art. 23, § 79), requiring all the assets of an insolvent corporation to be distributed to its creditors in the same way as the assets of an insolvent debtor, and Code 1888, art. 23, § 269 (see Code 1911, art. 23, § 79), vesting in receivers of a corporation all the estate and assets of every kind belonging to such corporation, do not enable the receivers of a bank to sue its stockholders under its special charter granted by Acts 1888, c. 294, making them liable "to the amount of their respective share or shares of stock in this corporation for all of its debts"; the indebtedness being to the creditors, and not to the corporation.—*Colton v. Mayer*, 90 Md. 711, 45 Atl. 874, 47 L. R. A. 617, 78 Am. St. Rep. 456. (But see Code 1911, art. 23, § 116.)

(d) Though a defendant may avail himself of any fraud, etc., practiced on him as an individual, yet he cannot, as a stockholder, claim an allowance in an action by the bank against him as indorser of a note, for any mismanagement of the officers of the bank.—*Whittington v. Farmers' Bank*, 5 H. & J. 489.

#### (D) OFFICERS AND AGENTS.

##### *Cross-References.*

Civil liability on insolvency, see post, § 82.  
Criminal responsibility on insolvency, see post, §§ 84, 85.  
Of loan, trust and investment companies, see post, § 314.  
Of national banks, see post, §§ 251, 253, 254, 256, 257.  
Of savings banks, see post, § 294.  
Representation of bank by officers and agents, see post, §§ 102-118.  
Right to sue directors depending on plaintiff's title to character of receiver, see post, § 77.  
Admissions by officers, agents, and employees as evidence, see "Evidence," § 244.  
Assignment of right of action against officer for selling to bank note of insolvent, see "Assignments," § 23.  
Bonds, see "Bonds," §§ 59, 61, 112, 120; "Contracts," § 112; "Principal and

Surety," §§ 10, 22, 44, 70, 121; "Subrogation," § 7.

Authority of cashier to extend time for payment of note so as to discharge indorser, see "Bills and Notes," § 256.

Concealment of cause of action against cashier as affecting limitations, see "Limitation of Actions," § 104.

Custom as to payment of interest on advancements by trustees of insolvent bank, see "Customs and Usages," § 16.

Elements of actionable deceit, see "Fraud," §§ 1-30.

Laws making it a crime to receive deposits after insolvency as denial of equal protection of the laws, see "Constitutional Law," § 240.

Liabilities for receiving deposit after insolvency constituting debts affected by banker's discharge in bankruptcy, see "Bankruptcy," § 426.

Liability of director for oral misrepresentations made in offering paper to bank for discount, see "Frauds, Statute of," § 38.

Necessity for consideration for guaranty by director of certificate of deposit, see "Guaranty," § 14.

Objection by payee of check that agreement by cashier with drawer was invalid under statute of frauds, see "Frauds, Statute of," § 143.

Overdraft affecting mechanic's lien against cashier, see "Mechanics' Liens," § 238.

Parol or extrinsic evidence as to personal or representative capacity, see "Evidence," § 418.

Presumption as to officers' knowledge of the law, see "Evidence," § 65.

Promise by cashier to repay loan made to another as within statute of frauds, see "Frauds, Statute of," § 23.

Representation of different corporations by same person, see "Corporations," § 401.

Right of bank to purchase at sale by stockholders and directors acting as trustees under trust deed, see "Mortgages," § 362.

Right of sureties of defaulting cashier to subrogation, see "Subrogation," § 7.

Right to act as trustees in deed of trust to bank, see "Mortgages," § 24.

Right to interest on money advanced to receiver of bank, see "Interest," § 10.

Statute of frauds as protection to officer misrepresenting condition of bank to depositor, see "Frauds, Statute of," § 38.

Survival of cause of action for negligence on death of officer, see "Abatement and Revival," § 55.

Validity of contract in violation of banking act, see "Contracts," § 105.

##### *Annotation.*

Power of bank officer to bind bank by agreement that liability of party to commercial paper shall not be enforced.—28 L. R. A. (N. S.) 501, note.

Implied power of cashier of bank to sell or lease property.—31 L. R. A. (N. S.) 737, note.

**§ 50. Statutory provisions.***Cross-References.*

Self-executing provisions of constitution imposing liability for debts and acts of bank, see "Constitutional Law," § 34.

Subject and title of act relating to penalty for receiving deposits while insolvent, see "Statutes," § 118.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 51. Election or appointment, qualification, and tenure.**

(a) Where, by the charter of a bank, the directors were to be chosen annually, and they, "for the time being, have power to appoint a cashier, and such other officers under them, as may be necessary for executing the business of said corporation," a cashier so appointed is an officer of the corporation, the duration of whose office, in the absence of an express limitation, is limited only by the duration of the charter; but he is liable to be removed by the directors as occasion may require, and is not necessarily an annual officer.—*Union Bank of Maryland v. Ridgely*, 1 H. & G. 324.

(b) Where a board of directors, by a vote, approved of two persons as sureties in a bond to be given by the cashier, and a bond, duly executed by them and the cashier, was afterwards found in the possession of the president, it was *held* that there was a sufficient acceptance thereof by the corporation.—*Union Bank of Maryland v. Ridgely*, 1 H. & G. 324.

(c) If a bank delivers to A. certain notes, with a request that he would pass them away for the benefit of the bank, or, if he could not do that, to return them, which he agrees to do, A., *quoad hoc*, is the servant of the bank.—*Towson v. Havre de Grace Bank*, 6 H. & J. 47, 14 Am. Dec. 254.

**§ 52. Meetings of directors.***Cross-Reference.*

Stockholders' meetings, see ante, § 44½.

(a) Where the charter of a bank requires seven directors to make a board, and declares the president to be entitled to all the powers and privileges of a director, the president and six directors constitute a sufficient board to satisfy the requisitions of the charter.—*Bank of Maryland v. Ruff*, 7 G. & J. 448.

**§ 53. Rights and liabilities as to bank and stockholders.****§ 54.— Nature and extent.***Cross-References.*

Construction of compromise agreement, see "Compromise and Settlement," § 12.

Liability of surety, see "Principal and Surety," § 121.

*Annotation.*

Care required of bank directors.—15 L. R. A. 305, note.

Liability of bank directors in case of bad loans or investments.—55 L. R. A. 762; 39 L. R. A. (N. S.) 173, notes.

**§ 54(a).— Rights against bank.**

(a) In an action on an alleged contract of employment as cashier against the persons who had agreed among themselves to organize a bank, and who had appointed one of their number to make arrangements for carrying out their plan, refusal to charge, as requested by certain defendants, that, if they were not present when the resolution electing plaintiff as cashier was passed, and did not subsequently ratify it, then plaintiff could not recover, was not prejudicial where it appeared that one of the organizers might have been a duly-authorized agent to employ plaintiff.—*Regester v. Medcalf*, 71 Md. 528, 18 Atl. 966.

**§ 55.— Actions and proceedings to enforce.***Cross-References.*

Liability of stockholders for costs, see "Costs," § 100.

Limitations in general, see "Limitation of Actions," §§ 30, 34, 37, 100.

Right of stockholder to enforce liability, see ante, § 54.

Testimony as to transactions with persons since deceased, see "Witnesses," § 140.

**§ 56. Liability for debts and acts of bank.***Cross-References.*

Appointment of receiver to enforce liability, see post, § 77.

As stockholders in general, see ante, § 49.

Civil liability on insolvency, see post, § 82.

Self-executing provisions of Constitution imposing liability, see "Constitutional Law," § 34.

**§ 57.— Nature and extent.****§ 58.— Actions and proceedings to enforce.***Cross-Reference.*

Limitations in general, see "Limitation of Actions," §§ 34, 57.

§ 59. (Omitted from the classification used herein.)

§ 60. Criminal responsibility.

*Cross-References.*

On insolvency, see post, §§ 84, 85.  
Embezzlement, see "Embezzlement," §§ 2, 29, 32, 33, 38, 48.  
Laws making it a crime to receive deposits after insolvency, as denying equal protection of laws, see "Constitutional Law," § 240.  
Principals and accessories, see "Criminal Law," § 78.

§ 61.— Offenses.

§ 62.— Prosecution and punishment.

*Cross-References.*

Admissions as evidence, see "Criminal Law," § 410.  
Documentary evidence, see "Criminal Law," §§ 434, 447.  
Indictment for false entries, pleading conclusion, see "Indictment and Information," § 63.  
Instructions as to intent, see "Criminal Law," § 772.  
Instructions invading province of jury, see "Criminal Law," § 763.  
Parol evidence, see "Criminal Law," § 447.  
Pleas, see "Criminal Law," § 292.  
Privilege of accused as to production of documents, see "Witnesses," § 298.  
Venue, see "Criminal Law," § 112.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

(E) INSOLVENCY AND DISSOLUTION.

*Cross-References.*

Enforcement of liability of stockholders, see ante, § 49.  
Of collecting bank, see post, § 166.  
Of loan, trust and investment companies, see post, §§ 316, 317.  
Of national banks, see post, §§ 281, 284-288.  
Of savings banks, see post, § 309.  
Bankruptcy proceedings against banks, see "Bankruptcy."  
Construction and operation of composition agreement, see "Compositions with Creditors," § 15.  
Construction of stipulation as to insolvency, see "Stipulation," § 14.  
Custom as to payment of interest on advancements by trustees of insolvent bank, see "Customs and Usages," § 16.  
Decisions of state courts as authority in federal courts, see "Courts," § 367.  
Effect of bankruptcy acts on state insolvency laws, see "Bankruptcy," § 9.  
Evidence in proceedings for allowance of interest against insolvent bank, see "Interest," § 67.  
Following property into hands of purchaser from insolvent bank, see "Trusts," § 356.

Interference by state court with property to which jurisdiction of federal court has attached, and vice versa, see "Courts," § 504.

Irregularities in taking default in insolvency proceedings as ground for setting it aside, see "Judgment," § 144.

Payment of taxes, see "Taxation," § 522.

Presumption that receiver is entitled to unindorsed note in his possession executed to third person, see "Bills and Notes," § 524.

Right to interest on money advanced to receiver of bank, see "Interest," § 10.

Statute of frauds as protection to officer making false representations to depositor concerning condition of bank, see "Frauds, Statute of," § 38.

Subrogation of stockholder to creditors' rights in payment of statutory liability, see "Subrogation," § 3.

Suspension of bank as excusing demand in order to start running of interest, see "Interest," § 46.

Transfer by insolvent bank of draft received for deposit, see "Bills and Notes," § 370.

§ 63. Constitutional and statutory provisions.

*Cross-References.*

Laws making it a crime to receive deposits after insolvency, as denying equal protection of laws, see "Constitutional Law," § 240.

Preference to non-stockholding depositors as class legislation, see "Constitutional Law," § 208.

Self-executing provisions of constitution, see "Constitutional Law," §§ 33, 34.

Subject and title of act relating to a penalty for receiving a deposit while insolvent, see "Statutes," § 118.

§ 64. Voluntary liquidation and dissolution.

§ 65. Reorganization in general.

*Cross-References.*

Effect as to liability of stockholders, see ante, §§ 47.

Estoppel by participating in reorganization to deny stockholder's liability, see ante, § 47.

Construction and operation of composition agreement, see "Compositions with Creditors," § 15.

Effect of judgment of reorganization, see "Judgment," § 707.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

§ 66. Effect on state bank of reorganization as national bank.

(a) Under the provisions of act 1865, c. 144, a state bank organized as a national bank in June, 1865; and in 1874 it sued out in its old corporate name, a scire facias on

a judgment obtained in 1864. *Held*, that the new bank was substantially the plaintiff, and, as such, was therefore liable for costs in case of judgment for the defendant.—*Thomas v. Farmers' Bank*, 46 Md. 43. (See Code, art. 11, § 27.)

(b) Under act 1865, c. 144, authorizing a change of the state banking institutions into national banks, and providing that they might continue to use their corporate name for the purpose of "prosecuting and defending suits" instituted by or against them, and of winding up their business, the Farmers' Bank of Maryland was converted into the Farmers' National Bank of Annapolis, in June, 1865. *Held*, that, on a judgment obtained by it in 1864, a scire facias might properly issue in the old corporate name of the bank against the original defendants.—*Thomas v. Farmers' Bank*, 46 Md. 43. (See Code, art. 11, § 27.)

(c) When a state bank has surrendered its charter to the state, and has organized as a national bank, the right of the state to continue to exact a bonus imposed by the charter for the exercise of the franchise is terminated.—*State v. National Bank*, 33 Md. 75. [*Cited and annotated* in 45 L. R. A. 759, on state tax on national banks; in 57 L. R. A. 57, on taxation of corporate franchises.]

## § 67. Consolidation.

### *Cross-Reference.*

Of national banks, see post, § 283.

## § 68. Grounds for forfeiture of franchise or dissolution.

## § 69. Waiver or remission of forfeiture.

## § 70. Proceedings to enforce dissolution.

## § 71. Receivers or commissioners in proceedings for dissolution.

## § 72. Effect of dissolution.

## § 73. Insolvency and its effect in general.

### *Cross-References.*

As affecting liability for receiving deposits, see post, § 82.

Conclusiveness of receiver's appointment on question of insolvency, see post, § 77. Construction of stipulation as to insolvency, see "Stipulations," § 14.

Evidence of value of building in determining solvency, see "Evidence," § 142.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in

Decennial and Key Number Digests, and references therein to Century Digest.

## § 74. Transfers and preferences affected by insolvency.

### *Annotation.*

Preferences by insolvent bank.—25 L. R. A. 546, note.

(a) A bank which had been insolvent for several years paid its president's check for a large amount, and retired its note, without demand, on which its officers were indorsers, and the day thereafter was hopelessly insolvent on account of such payments. Its dissolution was decreed, and receivers were appointed. *Held*, that, though the bank was a going concern at the time of the payments, they were unlawful preferences, and acts of insolvency, and such payments when the officers must have known its condition were a fraud on other creditors for whom the officers held its property in trust, and recoverable by such receivers.—*James Clark Co. v. Colton*, 91 Md. 195, 46 Atl. 386, 49 L. R. A. 698. (See Code, art. 23, §§ 78, 79; art. 47, §§ 8, 14, 22.)

(b) Where a bank had been insolvent for several years, and it is shown without contradiction that at the time payments were made to its president and directors, or the day thereafter, it became hopelessly insolvent, such payments, when attacked as unlawful preferences, cannot be defended on the ground that such president and directors had no knowledge of the insolvency, since such knowledge is imputed to them by law.—*James Clark Co. v. Colton*, 91 Md. 195, 46 Atl. 386, 49 L. R. A. 698.

(c) An incorporated bank, not being a person capable of taking the benefit of the insolvent laws of the state of Maryland, is not within, or affected by, Acts 1812, c. 77, § 1, and Acts 1816, c. 221, § 6, which provide that deeds, etc., made to a creditor or security "with a view or under expectation of becoming an insolvent debtor," and with intent thereby to give undue preference to such creditor, shall be void.—*State v. Bank of Maryland*, 6 G. & J. 205, 26 Am. Dec. 561. (See Code, art. 23, §§ 78, 79; art. 47, §§ 8, 14, 22.) [*Cited and annotated* in 22 L. R. A. (N. S.) 802, 803, on preferences by insolvent corporations.]

## § 75. Rights of persons making deposits after insolvency.

### Cross-References.

Imputation to bank of cashier's knowledge of insolvency," § 116.

Right of depositor to preference, see post, § 80.

Set-off by depositor, see post, § 135.

Actions against bankrupt after discharge, see "Bankruptcy," § 436.

Application of general statute of limitations, see "Limitation of Actions," § 34.

Constitutional provisions giving preferences as self-executing, see "Constitutional Law," § 33.

Liabilities for receiving deposit after insolvency constituting debts affected by banker's discharge in bankruptcy, see "Bankruptcy," § 426.

Statute of frauds as protection to officer making false representation to depositor concerning condition of bank, see "Frauds, Statute of," § 38.

Transfer by bank of draft received for deposit, see "Bills and Notes," § 370.

### Annotation.

Trust in deposit in insolvent bank.—34 L. R. A. 532, note.

## § 76. Remedies and proceedings on insolvency.

### Cross-References.

Evidence in proceedings for allowance of interest against insolvent bank, see "Interest," § 67.

Effect of stipulation, see "Stipulations," § 14.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 77. Assets and receivers on insolvency.

### Cross-References.

Liability of stockholders for debts and acts of bank, see ante, §§ 47-49.

Concealment of assets as affecting limitations, see "Limitation of Actions," § 104.

Vesting of depositor's title in receiver as affecting right of bank to apply deposit on note, see "Receivers," § 70.

Action to have proceeds of collections declared a preferred claim, see post, § 166.

Enforcement of liability of bank officers, see ante, § 58.

Enforcement of stockholders' liability, see ante, § 49.

(a) The bill in an action by the receiver of a bank against directors for losses occasioned by their wrongful acts need not include all of the directors who participated in any of such acts.—Gaither v. Bauernschmidt, 108 Md. 1, 69 Atl. 425.

## § 78. Assignments for benefit of creditors.

### Cross-References.

Civil liability on insolvency, see post, § 82. Presentation and payment of claims, see post, § 80.

Rights of persons making deposits after insolvency, see ante, § 75.

Interference by state court with property to which jurisdiction of federal court has attached, and vice versa, see "Courts," § 504.

Right of action by assignee to recover overpayments to creditors in general, see "Assignments for Benefit of Creditors," § 268.

Set-off by depositor against assignee, see "Assignments for Benefit of Creditors," § 186.

(a) A bank may make an assignment for the benefit of creditors.—Union Bank of Tennessee v. Ellicott, 6 G. & J. 363.

## § 79. Rights of holders of circulating notes.

(a) Under act 1818, c. 177, and act 1824, c. 199, debts due insolvent banking corporations may be paid in the notes of the bank, and in its certificates of deposit, without reference to the time when such notes or certificates were acquired.—Union Bank of Tennessee v. Ellicott, 6 G. & J. 363. [Cited and annotated in 23 L. R. A. 314, on set-off against claim in hands of receiver, assignee or trustee for creditors.]

## § 80. Presentation and payment of claims.

### Cross-References.

Holding bank as trustee with regard to moneys collected, see post, § 166.

Constitutional provisions giving preferences as self-executing, see "Constitutional Law," § 33.

Evidence in proceedings for allowance of interest against insolvent bank, see "Interest," § 67.

Interest on claims allowed, see "Interest," § 22.

Presentation and allowance of claim for deposit as amounting to demand sufficient to start running of interest, see "Interest," § 46.

Right of action by assignee to recover overpayments to creditors in general, see "Assignments for Benefit of Creditors," § 268.

Set-off by depositor against debts due by bankrupt bank, see "Bankruptcy," § 154.

Preference to nonstockholding depositors as class legislation, see "Constitutional Law," § 208.

Whether deposit is special so as to entitle depositor to preference, see post, § 153.

Holding bank as trustee with regard to money collected, see post, § 166.

Following property into hands of purchaser from insolvent bank, see "Trusts," § 356.

Public money, see "Schools and School Districts," § 92; "States," § 110.

(a) A depositor in a bank drew a certified check thereon to the order of the president, and the amount of the check was credited to a special account, its proceeds being used to pay semi-monthly charges which the depositor was bound to pay for the hire of a ship. Before this money was all paid out, the bank went into the hands of receivers, and on the day when the receivers were appointed there appeared on the books of the bank to be in other banks and on hand less than \$5,000, of which amount only about \$2,000 was received by the receivers in currency and checks. This latter amount was deposited on the day that the receivers were appointed, and nothing was ever realized from the balances in other banks. *Held*, that, since the special trust fund created by the drawing of the certified check had not been kept separate by the bank, but the only money on hand at the time it stopped business did not belong to that fund, so that the money belonging thereto could not be traced or identified, the depositor was not entitled to receive the balance belonging to such fund in preference to other creditors of the bank.—*Italian Fruit & Importing Co. v. Penniman*, 100 Md. 698, 61 Atl. 694, 1 L. R. A. (N. S.) 252.

(b) Where a depositor in a bank which has become insolvent files his claim with the trustee in insolvency, it is an acceptance of his contract relation with the bank, waiving the right to rescind on the ground of fraud, in that the deposit was accepted by the bank with knowledge of its insolvency.—*Pott v. Schmucker*, 84 Md. 535, 36 Atl. 592, 35 L. R. A. 392, 57 Am. St. Rep. 415.

### § 81. Distribution of surplus.

(a) Upon the dissolution of a bank, a resolution permitted debtors to the bank to pay their debts in stock at a certain price, and also provided that dividends should be paid to other stockholders at the same rate. From time to time dividends were allowed to non-debtor stockholders, extending over a period

of several years, whereby such stockholders suffered a disadvantage with respect to interest as compared with debtors who turned their stock upon their debts immediately after the passage of the resolution. On a bill by the nondebtor stockholders to equalize the dividends, *held*, that, since those who paid their debts in stock prevented an accumulation of interest on their debts from the time of such payment, they should be regarded, upon subsequent distributions of the fund, as if they had received interest on their stock from the time it was applied upon their debts, consequently they are to receive no dividends on their stock until the other stockholders are, by dividends to be made, placed upon an equality with them, as respects the receipt of interest.—*Conococheague Bank v. Ragan*, 7 G. & J. 341.

### § 82. Civil liability on insolvency.

#### Cross-References.

Preferences to non-stockholding depositors as class legislation, see "Constitutional Law," § 208.

Self-executing provisions of Constitution, see "Constitutional Law," § 34.

Statute of frauds as protection to officer misrepresenting condition of bank to depositor, see "Frauds, Statute of," § 38.

Liabilities for receiving deposit after insolvency constituting debts affected by banker's discharge in bankruptcy, see "Bankruptcy," § 426.

Subject and title of act relating to penalty for receiving deposits while insolvent, see "Statutes," § 118.

Right to attachment in action against directors for receiving deposit knowing bank to be insolvent, see "Attachment," § 7.

### §§ 83-85. Criminal responsibility on insolvency.

#### Cross-References.

Constitutional and statutory provisions, see ante, § 63.

Laws making it a crime to receive deposits after insolvency as denying equal protection of the laws, see "Constitutional Law," § 240.

Subject and title of act relating to penalty for receiving deposit, see "Statutes," § 118.

Action for libel accusing of crime, see "Libel and Slander," § 7.

Former jeopardy, see "Criminal Law," §§ 168, 202.

Duplicity, see "Indictment and Information," § 125.

Proof of surplusage, see "Indictment and Information," § 167.

*Annotation.*

Criminal liability for receiving deposit in bank knowing of its insolvency.—31 L. R. A. 124; 20 L. R. A. (N. S.) 444; 22 L. R. A. (N. S.) 266, notes.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**III. FUNCTIONS AND DEALINGS.***Cross-Reference.*

Of loan, trust, and investment companies, see post, § 315.

(A) **BANKING FRANCHISES AND POWERS, AND THEIR EXERCISE IN GENERAL.**

*Cross-References.*

Forfeiture of franchise, see ante, § 68.

Of national banks, see post, §§ 258-261, 295.

**§ 86. What are banking powers in general.**

**§ 87. Construction of charters and banking laws.**

(a) Acts 1898, c. 266, reciting that a corporation since its organization had conducted a savings bank, but that it desired to have its corporate powers increased and enlarged to enable it to conduct a general banking business, and then authorizing and empowering it to borrow money, receive money on deposit, and pay interest thereon, to lend money on real or personal security, discount, buy or sell commercial paper, and to do or transact a general banking business, gives the bank adequate authority to transact a general banking business, notwithstanding ambiguity and inconsistency in provisions of the act, including a provision that the bank should be subject to the provisions of the statutes relating to security and guarantee companies.—*State v. German Sav. Bank*, 103 Md. 196, 63 Atl. 481.

**§ 88. Rules of bank.**

(a) Where the charter of a bank granted the power to regulate the manner of making and receiving deposits, and to pass all necessary by-laws, a by-law providing for the reception of special deposits, in the nature of loans bearing interest, is within the powers of the bank.—*Heironimus v. Sweeney*, 83 Md. 146, 34 Atl. 823; *Edwards v. Same, Id.*

**§ 89. Customs and usages.**

*Cross-References.*

Affecting authority in making collections, see post, § 161.

Affecting rights and liabilities of members of clearing house, see "Customs and Usages," § 7.

*Annotation.*

Banking customs.—21 L. R. A. 440, note. Effect of usage to bind bank.—21 L. R. A. 446, note.

(a) Evidence of a custom among banks and brokers in a particular city to treat registered Virginia consols as negotiable, when accompanied by a power of attorney authorizing the agent to sell, is not admissible in an action by the owner of the consols against a bank to which they have been pledged by the agent as a security for his own debt, as no custom can change the legal character of the power of attorney.—*First Nat. Bank v. Taliaferro*, 72 Md. 164, 19 Atl. 364. [*Cited and annotated in 21 L. R. A. 445, on banking customs.*]

(b) The custom among bankers, as to the form and character of transfers of a particular class of securities, when not complied with as to securities of that class received by a bank, is sufficient to put the bank on inquiry as to ownership.—*Taliaferro v. Baltimore First Nat. Bank*, 71 Md. 200, 17 Atl. 1036.

(c) In an action by a bank on a note held by its as collateral, it was not error to reject evidence of a custom of banks to send notices to persons whose names were on notes held as collateral, and that no such notice had been sent to defendant, as no rule of law required the sending of such notice, and plaintiff had not adopted such custom.—*Williams v. National Bank*, 70 Md. 343, 17 Atl. 382. [*Cited and annotated in 68 L. R. A. 485, on effect of collateral or conditional holder's failure to make demand or give notice of dishonor.*]

(d) A usage that a bank which has certified my mistake a note as good cannot correct such mistake is unreasonable. Errors may always be corrected before the other party, acting upon them as true, has incurred any loss or damage, or assumed any new rights or liabilities.—*Second Nat. Bank v. Western Nat. Bank*, 51 Md. 128, 34 Am. Rep. 300.



(e) In an action against a bank for not forwarding a draft for acceptance, after discounting it for plaintiff, the fact that plaintiff had been the constant customer of the bank, which has discounted for him many drafts, and immediately forwarded them for acceptance, when the law did not require it so to do, is no just reason why the bank should be compelled to pursue a similar course in the future.—*Citizens' Bank v. Grafflin*, 31 Md. 507, 1 Am. Rep. 66. [Cited and annotated in 21 L. R. A. 440, 446, on banking customs.]

(f) The existence of a general usage prevailing among banks must be established as a fact, and not as a matter of judgment or opinion of witnesses deduced from the manner of dealing in a few instances in particular banks.—*Chesapeake Bank v. Swain*, 29 Md. 483. [Cited and annotated in 21 L. R. A. 445, on banking customs.]

(g) A single case is not sufficient to establish a general usage of a bank.—*Davall v. Farmers' Bank*, 9 G. & J. 31.

## § 90. Agency of bank.

## § 91. Purchasing and holding bank's own stock.

### Cross-Reference.

Presumption as to officers' knowledge of the law, see "Evidence," § 65.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 92. Purchasing and holding stock in other corporations.

(a) A bank which purchases stock as a broker but takes it in its own name, when it appears upon the books of the corporation, assumes the liability of a stockholder as between itself and the corporation.—*McKim v. Glenn*, 66 Md. 479, 8 Atl. 130. [Cited and annotated in 47 L. R. A. 256, on effect of transfer of stock on liability for unpaid subscription; in 30 L. R. A. (N. S.) 1092, on personal liability of executor, administrator, or trustee on corporate stock standing in his name.]

## §§ 93-95. Property and conveyances.

### Cross-Reference.

Disposition of property by officers or agents, see post, § 104.

## § 96. Contracts in general.

### Cross-Reference.

Representation of bank by officers and agents, see post, § 105.

## § 97. Borrowing money.

## § 98. Negotiable instruments.

### Cross-References.

Effect of ultra vires, see post, § 101.

Validity of note made to deceive state officer, see "Bills and Notes," § 106.

## § 99. Guaranty and suretyship.

### Cross-Reference.

Applying bank deposit to liability as guarantor or surety, see post, § 134.

## § 100. Torts.

### Cross-References.

Representation of bank by officers and agents, see post, § 112.

Elements of actionable deceit, see "Fraud," § 13.

## § 101. Effect of acts ultra vires.

### Cross-References.

Estoppel to deny corporate powers, see "Corporations," § 388.

Validity of contract in violation of banking act, see "Contracts," § 105.

(a) In an action by a banking corporation on a note, against the maker, it is no defense that the bank has no authority to purchase the note, for the doctrine of ultra vires is not applicable to executed contracts.—*Black v. First Nat. Bank*, 96 Md. 399, 54 Atl. 88.

## (B) REPRESENTATION OF BANK BY OFFICERS AND AGENTS.

### Cross-References.

National banks, see post, § 262.

Savings banks, see post, § 297.

Elements of actionable deceit, see "Fraud," §§ 1-30.

Objection by payee of check that agreement by cashier with drawer was invalid under statute of frauds, see "Frauds, Statute of," § 143.

Parol or extrinsic evidence as to personal or representative capacity, see "Evidence," § 418.

Representation of different corporations by same person, see "Corporations," § 401.

Right of bank to purchase at sale by stockholders and directors acting as trustees under trust deed, see "Mortgages," § 362.

Right of officer to act as trustee in deed of trust to bank, see "Mortgages," § 24.

Validity of contract in violation of banking act, see "Contracts," § 105.

## § 102. Grounds and extent of liability in general.

## § 103. Statutory provisions.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 104. Disposition of property.

### Annotation.

Implied power of cashier of bank to sell or lease property.—31 L. R. A. (N. S.) 737, note.

(a) Where a president of a bank has authority to indorse a note, he has authority to deliver the same.—*Merrick v. Bank of Metropolis*, 8 Gill 59.

(b) The president and directors of a bank have a right to assign for the payment of its debts, without the assent of the stockholders.—*Merrick v. Bank of Metropolis*, 8 Gill 59.

## § 105. Contracts.

### Cross-Reference.

Validity of contract in violation of banking act, see "Contracts," § 105.

### Annotation.

Power of bank officer to bind bank by agreement that liability of party to commercial paper shall not be enforced.—28 L. R. A. (N. S.) 501, note.

(a) If the cashier of a bank promise to pay a debt which the corporation did not owe, or was not liable to pay, or should admit forged bills to be genuine, such promise or admission would not bind the bank, unless it had authorized or adopted the act.—*Merchants' Bank v. Marine Bank*, 3 Gill 96, 43 Am. Dec. 300.

## § 106. Deposits.

### Cross-References.

See ante, § 96.

Notice to officer or agent, see post, § 116.

## § 107. Collections.

## § 108. Loans and discounts.

### Cross-Reference.

Notice to officer or agent, see post, § 116.

## § 109. Bills, notes, and securities.

### Cross-References.

Notice to officer or agent, see post, § 116.  
Delivery of note to vice-president of bank as delivery in escrow, see "Escrows," § 3.

Authority to extend time for payment of note so as to discharge indorser, see "Bills and Notes," § 256.

Validity of note made to deceive state officer, see "Bills and Notes," § 106.

(a) The cashier of a bank has no implied power by virtue of his office to extend the time of payment of a note, without the knowledge or consent of a party primarily liable thereon.—*Yanderford v. Farmers' & Mechanics' Nat. Bank of Westminster*, 105 Md. 164, 66 Atl. 47, 10 L. R. A. (N. S.) 129. [Cited and annotated in 28 L. R. A. (N. S.) 502, on power of officer to bind bank by agreement that liability of party to commercial paper shall not be enforced.]

(b) It is not within the general power of a cashier to release a party to a note from his liability to the bank thereon by taking another note signed by all of the parties to the original save the one so attempted to be released; nor can he, by virtue of his office, release as surety, even though the bank holds other security to which it may resort.—*Ecker v. First Nat. Bank*, 59 Md. 291. [Cited and annotated in 28 L. R. A. (N. S.) 502, on power of officer to bind bank by agreement that liability of party to commercial paper shall not be enforced.]

(c) The president and directors of a bank, having by the charter full power to conduct its affairs, may authorize the president to indorse its notes.—*Merrick v. Bank of Metropolis*, 8 Gill 59.

## § 110. Actions.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 111. Representations or admissions.

### Cross-Reference.

Evidence against bank, see "Evidence," § 244.

(a) In an action for rent against a banking company, the fact that a certain person was its cashier, and negotiated for the renting of the premises, does not constitute evidence of his authority to bind the company by remarks made to plaintiff as to the purpose for which the premises were rented, or the terms of a previous renting thereof.—*Union Banking Co. v. Gittings*, 45 Md. 181.

(b) The cashier of a bank has no incidental authority to make any declarations binding the bank, not within the scope of his ordinary duties.—*Merchants' Bank v. Marine Bank*, 3 Gill 96, 43 Am. Dec. 300.

**§ 112. Wrongful acts.***Cross-Reference.*

Liability for torts in general, see ante, § 100.

**§ 113. Estoppel to deny authority of officer or agent.***Cross-References.*

Officer of trust company, see post, § 315.  
Officers of national banks, see post, § 262.

**§ 114. Ratification.***Cross-Reference.*

As affecting officer's liability for illegal loan, see ante, § 54.

**§ 115. Rights acquired by bank.****§ 116. Notice to officer or agent.***Cross-References.*

Notice of fraud in conveyance implied from relation of parties, see "Fraudulent Conveyances," § 157.

Of bankruptcy proceedings as affecting discharge of debts not duly scheduled, see "Bankruptcy," § 425.

(a) Where the vice-president of a bank in his private capacity, while not acting in behalf of the bank, learned that a check was impressed with a trust, but did not communicate that fact to the bank directors or officials, the knowledge of the vice-president was not notice to the bank.—*Denton Nat. Bank v. Kenney*, 116 Md. 24, 81 Atl. 227. [Cited and annotated in 37 L. R. A. (N. S.) 409, on applicability of deposits to depositor's indebtedness where word suggestive of fiduciary character is appended to name.]

(b) Notice to a director of a banking corporation privately, or acquired by him generally through channels open to all persons, and which he does not communicate to his associates in the management of the corporation, is not binding on the same.—*Black v. First Nat. Bank*, 96 Md. 399, 54 Atl. 88.

**§ 117. Individual interest of officer or agent as affecting person dealing with bank.***Cross-Reference.*

Effect of individual interest on rights and liabilities of officer as to bank, see ante, § 54.

**§ 118. Evidence as to authority.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**(C) DEPOSITS.***Cross-References.*

Civil liability of officers for receiving after insolvency, see ante, § 82.

Criminal responsibility of officers for procuring or receiving after insolvency, see ante, §§ 84, 85.

For collection, see post, §§ 156-175.

In national banks, see post, §§ 263, 267.

In savings banks, see post, §§ 299-301.

Preferred claims on insolvency, see ante, § 80.

Procuring and receiving deposits when insolvent, see ante, §§ 82, 84, 85.

Representation of bank by officers and agents, see ante, § 106.

Rights of persons making deposits after insolvency, see ante, § 75.

With trust companies, see post, § 315.

Application of deposit of person who has promised to pay debt of another, see "Contracts," § 187.

As payment discharging bank's mechanic's lien, see "Mechanics' Liens," § 238.

As preference in violation of bankrupt law, see "Bankruptcy," § 163.

Banks as public or private depositories, see "Depositories."

Bequest of deposit, see "Wills," § 566.

Best and secondary evidence of assignment of account, see "Evidence," § 158.

Check as bill of exchange, see "Bills and Notes," § 15.

Check as equitable assignment, see "Assignments," § 49.

Checks as negotiable instruments, see "Bills and Notes," §§ 15, 149.

Checks signed by party to contract together with book entries as sufficient memoranda to satisfy statute of frauds, see "Frauds, Statute of," § 118.

Claims by bank against bankrupt depositor's estate, see "Bankruptcy," § 326.

Consent of bank to assignment, see "Assignments," § 58.

Constituting preference by bankrupt, see "Bankruptcy," § 163.

Constituting testamentary disposition, see "Wills," § 69.

Crediting proceeds as consideration for purchase of note by bank, see "Bills and Notes," § 356.

Creditors' suits to reach deposits made in depositor's name to defraud creditors, see "Fraudulent Conveyances," § 242.

Deposit by debtor to creditor's account as payment, see "Payment," § 8.

Effect of assignment, see "Assignments," § 73.

Extent of liability on bond for security of, see "Bonds," § 62.

Following trust funds deposited in banks, see "Trusts," § 356.

Forgery of checks, see "Forgery."

Garnishment, see "Garnishment," § 56.

Gift of, see "Gifts," §§ 30, 66.

Interpleader in relation thereto, see "Interpleader," § 11.

Intoxication of drawer as invalidating check, see "Contracts," § 92.

Larceny of checks, see "Larceny," § 30.  
 Laws making it a crime to receive deposits after insolvency as denying equal protection of laws, see "Constitutional Law," § 240.  
 Liability of bank to creditors attacking deposit as fraudulent, see "Fraudulent Conveyances," § 242.  
 Liability of executor or administrator in respect to funds deposited in bank, see "Executors and Administrators," § 105.  
 Mistake in payment of fund to depositor's trustee in bankruptcy, see "Bankruptcy," § 154.  
 Mode of assessment, see "Taxation," § 386.  
 Money paid into court, see "Deposits in Court," §§ 4, 8.  
 Parol assignment, see "Assignments," § 34.  
 Payment of money into court, see "Deposits in Court," § 1.  
 Payments of debts in general by checks, see "Payment," §§ 20-23.  
 Power of wife to authorize husband to withdraw, see "Husband and Wife," § 138.  
 Powers of building and loan associations, see "Building and Loan Associations," § 24.  
 Preference to non-stockholding depositors as class legislation, see "Constitutional Law," § 208.  
 Priority of assignment by check as affected by recording acts, see "Assignments," § 84.  
 Privileged communications relating to, see "Witnesses," § 196.  
 Promise by bank to pay debt out of debtor's deposit as within statute of frauds, see "Frauds, Statute of," § 34.  
 Recovery of payment of check, see "Payment," § 89.  
 Right of husband to draw on deposits belonging to wife's separate estate, see "Husband and Wife," § 137.  
 Right of member of insolvent building and loan association to full amount of check given him on balancing his account and canceling stock, see "Building and Loan Associations," § 42.  
 Rights to attachment in action against directors for receiving knowing bank to be insolvent, see "Attachment," § 7.  
 Securities by foreign corporations, see "Corporations," § 647.  
 Statute of frauds as protection to officer misrepresenting condition of bank to depositor, see "Frauds, Statute of," § 38.  
 Subject and title of acts relating thereto, see "Statutes," §§ 113, 118.  
 Taxation, see "Schools and School Districts," § 92; "Taxation," §§ 130, 282, 386, 522.  
 Testamentary character of gift or transfer of bank deposit, see "Wills," §§ 89, 90.  
 What constitutes check, see "Bills and Notes," § 1.

## § 119. Relation between bank and depositor in general.

### Cross-Reference.

Deposit of money as creating trust, see "Trusts," § 34.

## § 120. Power and duty to receive deposits.

## § 121. Making, receipt, and entry of deposits in general.

### Cross-References.

Deposits for collection, see post, § 158.

Pass books and accounts, see post, § 151.

### Annotation.

Receiving deposits while insolvent as a fraud.—34 L. R. A. 533, note.

Deposit in joint names as gift to co-depositor.—12 L. R. A. (N. S.) 355, note.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 122. Deposits other than money.

### Cross-References.

Defenses against negotiable check received for deposit, see "Bills and Notes," § 365.

Presumption that check deposited with bank was issued for valuable consideration, see "Bills and Notes," § 497.

Transfer by insolvent bank of draft received for deposit, see "Bills and Notes," § 370.

## § 123.— In general.

(a) Where a person deposits in a bank a check payable to his order, indorsed, "For deposit to the credit" of the payee, the depositor cannot claim the check, as against another bank, with which it had been deposited by the first bank, which received credit for its full amount, and thereafter, having overdrawn its account, made an assignment for creditors.—*Ditch v. Western Nat. Bank*, 79 Md. 192, 29 Atl. 72, 138, 47 Am. St. Rep. 375, 23 L. R. A. 164.

(b) Where a person deposits in a bank a check payable to his order, indorsed, "For deposit to the credit" of the payee, which is placed to his credit as cash, the title thereto is vested in the bank, though it has been its custom to charge dishonored checks to the depositor, instead of proceeding against the drawee.—*Ditch v. Western Nat. Bank*, 79 Md. 192, 29 Atl. 72, 138, 47 Am. St. Rep. 375, 23 L. R. A. 164.

## § 124.— Checks and drafts on depositor's bank.

## § 125.— Forged or altered paper.

**§ 126.—Entry to credit of depositor.***Annotation.*

Admissibility in evidence of entries in bank books.—53 L. R. A. 536, note.

**§ 127.—Title and rights of bank.**

(a) Where a check drawn to the order of one designated as attorney, with a marginal memorandum, "in full for mortgage," was indorsed by the attorney in blank and deposited at his bank, the title passed to the bank.—*Denton Nat. Bank v. Kenney*, 116 Md. 24, 81 Atl. 227. [*Cited and annotated* in 37 L. R. A. (N. S.) 409, on applicability of deposits to depositor's indebtedness where word suggestive of fiduciary character is appended to name.]

(b) Where the payee of a draft deposited it with a bank, and received credit at the bank as depositor, the proceeds of the draft became the property of the bank, and could not be recovered by the drawer on a failure of consideration of the draft as between the drawer and the payee.—*Reed Grocery Co. v. Canton Nat. Bank*, 100 Md. 299, 59 Atl. 716, 70 L. R. A. 959.

**§ 128. Title to and disposition of deposits.***Cross-Reference.*

Payment of money into court, see "Deposits in Court," § 1.

**§ 129.—In general.**

(a) Where a bank accepted a draft of a depositor as a discount, and not for collection merely, the title to the draft passed immediately on deposit to the bank as against the creditors of the depositor.—*Auto & Accessories Mfg. Co. v. Merchants' Nat. Bank*, 116 Md. 179, 81 Atl. 294.

(b) The facts that plaintiff, who deposited money in the names of her nieces, but subject to plaintiff's order, accepted deposit books containing a by-law permitting parents to deposit for children, and that plaintiff stood in loco parentis to the nieces, is not sufficient to show that the deposits were made for the benefit of the nieces, thereby justifying the bank in refusing to allow plaintiff to withdraw them, if plaintiff did not intend to make a gift to the nieces, and did not tell them of the deposits, or relinquish control of them.—*Savings Bank of*

*Baltimore v. McCarthy*, 89 Md. 194, 42 Atl. 929.

(c) When payment of a check upon a bank is refused, the recourse of the holder is against the drawer, and not against the bank, even though the bank, at the time the check was presented for payment, held funds of the drawer sufficient to meet the check.—*Moses v. Franklin Bank*, 34 Md. 574.

**§ 130.—Trust funds.***Cross-References.*

Application to debts due to bank, see post, § 134.

Knowledge of officers as affording notice to bank of trust character of fund, see ante, § 116.

Preferred claim against bank on insolvency, see ante, § 80.

Following trust funds deposited in banks, see "Trusts," § 356.

*Annotation.*

Deposit as direct trust, and effect of depositing money in bank in trust for third person.—8 L. R. A. 648; 32 L. R. A. 373, notes.

Effect of deposit by broker or factor to his own account of proceeds of sale of customer's stock or property to create a trust entitled to a preference.—27 L. R. A. (N. S.) 808, note.

Liability of bank or other depository, or of drawee, for taking deposit of agent, fiduciary, or other representative to pay his own debt.—52 L. R. A. 790, note.

Trust in deposit in insolvent bank.—34 L. R. A. 532, note.

(a) The name of the drawee in a check was followed by the abbreviation "Atty.," and there was a marginal note, "in full for A. J. K. mortgage." *Held*, that the abbreviation did not give notice to the bank in which the check was deposited that it was impressed with a trust, for "attorney" may mean "assignee," "agent," or "attorney at law," and the marginal memorandum did not broaden that meaning; for banks are not required to notice marginal memoranda.—*Denton Nat. Bank v. Kenney*, 116 Md. 24, 81 Atl. 227. [*Cited and annotated* in 37 L. R. A. (N. S.) 409, on applicability of deposits to depositor's indebtedness where word suggestive of fiduciary character is appended to name.]

(b) A bank credited to the personal account of C., who was trustee of an estate, the proceeds of a check deposited therein, issued in payment of a debt due such estate, in these words: "Pay to the order of S.,

cashier, \$2,000, for deposit to the credit of C., being the balance of purchase money due him as trustee from J." C. drew the money from the bank, and embezzled it. *Held*, that the bank was not liable to the estate on the theory that it knowingly participated in the breach of trust, since it credited the proceeds as directed in the check.—*Duckett v. National Mechanics' Bank*, 86 Md. 400, 38 Atl. 983, 39 L. R. A. 84, 63 Am. St. Rep. 513. [Cited and annotated in 52 L. R. A. 793, on liability of bank, other depository, or drawee for applying fiduciary's deposit on own debt; in 1 L. R. A. (N. S.) 190, on word "trustee" as effecting negotiability or as notice of beneficiaries' rights.]

(c) The bank was held liable to the estate for the proceeds of a check deposited therein, and credited to C.'s personal account, and afterwards drawn and embezzled by C., where the check was: "Pay to the order of S., cashier, \$2,024.30, to deposit to the credit of C., trustee."—*Duckett v. National Mechanics' Bank*, 86 Md. 400, 38 Atl. 983, 39 L. R. A. 84, 63 Am. St. Rep. 513. [Cited and annotated in 1 L. R. A. (N. S.) 190, on word "trustee" as affecting negotiability or as notice of beneficiaries' rights.]

(d) The liability of the bank was held not affected by the fact that C. ratified its act in placing the money to his individual credit.—*Duckett v. National Mechanics' Bank*, 86 Md. 400, 38 Atl. 983, 39 L. R. A. 84, 63 Am. St. Rep. 513.

(e) A trustee, authorized to receive trust money in his co-trustee's absence, indorsed a check payable to both, as if he were sole trustee, and it was credited to him as such in bank. He then gave S. a check on this fund, to pay a debt which he owed in another capacity. The trustee check was refused, when presented to the drawee for payment, because indorsed by but one trustee. The trustee, by agreement with his bank, then added his co-trustee's name to the indorsement, and to the signature of the check to S., and opened the account in the joint trustees' names. *Held*, that the trustees' bank had notice of the misappropriation of the trust funds, and that, by paying the check to S., it became a party to the wrong, and liable therefor.—*Swift v. Williams*, 68 Md. 236, 11 Atl. 835.

(f) Money deposited in bank by a board of street examiners, as such, who are superseded by a new board, is subject to the order of the new board.—*Carman v. Franklin Bank of Baltimore*, 61 Md. 467.

### § 131.—Funds of person other than depositor.

#### Cross-Reference.

Trust funds, see ante, § 130.

### § 132. Interest on deposits.

#### Cross-References.

Deposits in savings bank, see post, § 303.  
Interest on certificate of deposit, see post, § 152.

Demand for interest on balances before suing, see "Interest," § 62.

Evidence of demand sufficient to start running of interest, see "Interest," § 67.

Interest on deposit from date of checks wrongfully cashed, see "Interest," § 39.

Necessity for demand before suing for deposit wrongfully paid out, see "Interest," § 46.

Necessity for pleading want of demand, see "Interest," § 66.

Presentation and allowance of claim for deposit, as amounting to demand sufficient to start running of interest, see "Interest," § 46.

Recovery of interest as distinct cause of action, see "Interest," § 62.

• Suspension of bank as excusing demand in order to start running of interest, see "Interest," § 46.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 133. Repayment in general.

#### Cross-References.

Deposit as due without demand when bank becomes insolvent, see ante, § 73.

Liability of stockholders, see ante, § 47.

Pass books and accounts, see post, § 151.

Payment of checks, see post, § 141.

Instructions as to payment, see "Payment," § 77.

Medium of payment, see "Payment," §§ 1-35.

Mistake in payment of fund to depositor's trustee in bankruptcy, see "Bankruptcy," § 154.

Payment to personal representative of deceased depositor, see "Executors and Administrators," § 519.

Recovery by bank of payments, see "Payment," § 84.

(a) In an action to recover from a bank in B. a sum of money in gold deposited in the bank, the plaintiff introduced in evidence an entry in his bank book as follows: "1861. Dec. 30. Cash (coin) \$3,000." *Held*, that evidence was admissible to prove that, according to the general and well-known

usage of the banks in B. existing before and at the time of the deposit in question and ever since, the entry offered in evidence imported an agreement on the part of the bank to return the deposit in kind, and that by usage the striking of balances subsequently to such entry, did not work any change in the character of the particular deposit, where the balances were always more than the amount of the deposit.—*Chesapeake Bank v. Swain*, 29 Md. 483. [Cited and annotated in 21 L. R. A. 445, on banking customs; in 29 L. R. A. 523, on special obligations for payment in gold or silver.]

(b) Where money deposited by one in a bank is used by the latter in payment of notes issued by it, and commonly called "counter tickets," the bank is liable to the depositor for the full amount deposited.—*City Bank v. Bateman*, 7 H. & J. 104.

### § 134. Application of deposits to debts due bank or set-off by bank.

#### Cross-References.

Application of deposit to pay overdrafts, see post, § 150.

As against payee or holder of check, see post, § 140.

Lien of bank on deposits, see post, § 136.

Set-off by depositor, see post, § 135.

Admissibility of evidence as to payment of depositor's debt to bank, see "Payment," § 70.

Application of deposit of person who has promised to pay debt of another, see "Contracts," § 187.

Claims by bank against bankrupt depositor's estate, see "Bankruptcy," § 326.

Constituting preference in violation of bankrupt law, see "Bankruptcy," § 163.

Deposit as payment discharging bank's mechanic's lien, see "Mechanics' Liens," § 238.

Presumptions and burden of proof as to payment of depositor's debt to bank, see "Payment," § 67.

Set-off against trustee in bankruptcy, see "Bankruptcy," § 154.

Set-off as preference preventing allowance of claim against bankrupt's estate, see "Bankruptcy," § 311.

#### Annotation.

Application of deposit to debt due bank.—9 L. R. A. 560; 30 L. R. A. (N. S.) 517; 8 L. R. A. (N. S.) 944, notes.

Right of bank to charge customer's account with amount paid to stranger without legal duress.—31 L. R. A. (N. S.) 763, note.

Effect upon surety or indorser, of bank's failure to apply principal's deposit account upon note.—8 L. R. A. (N. S.) 944, note.

(a) A bank holding unmatured notes of a corporation when the latter goes into a receiver's hands may set off the notes against the deposit to the corporation's credit in the bank.—*Hayden v. Citizens' Nat. Bank of Baltimore*, 120 Md. 163, 87 Atl. 672, 46 L. R. A. (N. S.) 1069.

(b) Where a check drawn to one designated as attorney, and impressed with a trust in favor of plaintiff, was indorsed by the drawer in blank and deposited in the bank in which he had an individual account and was, by the bank credited to his individual account, the bank could, without his consent, apply the proceeds of the check to his antecedent indebtedness, provided it had no notice of the trust.—*Denton Nat. Bank v. Kenney*, 116 Md. 24, 81 Atl. 227. [Cited and annotated in 37 L. R. A. (N. S.) 409, on applicability of deposits to depositor's indebtedness where word suggestive of fiduciary character is appended to name.]

(c) A bank may apply its debtor's deposits to the payment of his debt to it.—*Records v. McKim*, 115 Md. 299, 80 Atl. 968.

### § 135. Set-off by depositor.

#### Cross-References.

Depositor in savings bank, see post, § 299.

Set-off by bank, see ante, § 134.

Against assignee of insolvent bank or banker, see "Assignments for Benefit of Creditors," § 186.

Against debts due bankrupt bank, see "Bankruptcy," § 154.

#### Annotation.

Set-off against assignee of bank.—23 L. R. A. 308, note.

(a) Where defendant made deposits in a bank which held a note against him, nearly matured, on failure of the bank before maturity of the note defendant's deposits constitute a common-law set-off against the note in the hands of the receivers, since such set-off would have been good as against the bank, and the insolvency law does not authorize the receivers to collect more than was due the bank.—*Colton v. Drovers' Perpetual Building & Loan Ass'n*, 90 Md. 85, 45 Atl. 23, 46 L. R. A. 388, 78 Am. St. Rep. 431. [Cited and annotated in 25 L. R. A. (N. S.) 396, on effect of immaturity of claim at time of insolvency proceedings upon right of set-off.]

(b) Receivers of an insolvent bank are not bona fide purchasers of its assets, and cannot refuse a debtor the right to set off a deposit in the bank against his debt.—*Colton v. Drovers' Perpetual Building & Loan Ass'n*, 90 Md. 85, 45 Atl. 23, 46 L. R. A. 388, 78 Am. St. Rep. 431.

(c) Under Acts 1896, c. 349 (Code, art. 23, § 79), providing that assets of an insolvent corporation shall be distributed in the same manner as assets of an insolvent debtor, and Code, art. 47, § 11, which provides that such estates shall be distributed according to the principles of equity, defendant's deposits in an insolvent bank, which held a note against him, but failed before its maturity, being an equitable set-off against the note in the hands of the bank's receivers, may be allowed, though no demand had been made for the deposits, since the insolvency of the bank relieved him of the necessity of making a demand.—*Colton v. Drovers' Perpetual Building & Loan Ass'n*, 90 Md. 85, 45 Atl. 23, 46 L. R. A. 388, 78 Am. St. Rep. 431. [Cited and annotated in 25 L. R. A. (N. S.) 396, on effect of immaturity of claim at time of insolvency proceedings upon right of set-off.]

(d) A note executed by defendant, held by and payable to a bank, is an asset in the hands of the bank's receivers, and is subject to equities existing between defendant and the bank, though the receiver was appointed before the note matured.—*Colton v. Drovers' Perpetual Building & Loan Ass'n*, 90 Md. 85, 45 Atl. 23, 46 L. R. A. 388, 78 Am. St. Rep. 431. [Cited and annotated in 25 L. R. A. (N. S.) 396, on effect of immaturity of claim at time of insolvency proceedings upon right of set-off.]

(e) A defendant cannot retain in his hands the amount specified in the promissory note on which the action is brought by a bank, although the bank may have in its possession money, dividends of stock, or other profits, to the same or greater amount, belonging to the defendant. He can only claim to have deducted from the note, money or other funds in the possession of the bank belonging to him.—*Whittington v. Farmers' Bank*, 5 H. & J. 489.

### § 136. Lien of bank on deposits.

#### *Cross-Reference.*

Application of deposits to debts due bank, see ante, § 134.

#### *Annotation.*

Right of bank to apply deposit to its own claim against adverse claimant.—31 L. R. A. (N. S.) 765, note.

Lien of bank on deposits.—6 L. R. A. 227, note.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 137. Payment of checks.

#### *Cross-References.*

Check as bill of exchange, see "Bills and Notes," § 15.

Intoxication of drawer as invalidating check, see "Contracts," § 92.

Liability between drawer and payee on dishonor by bank, see "Bills and Notes," § 26.

Right to stop payment of check as dependent on right to rescind contract under which check was given, see "Contracts," § 259.

Time for presenting checks for payment in order to bind drawer, see "Bills and Notes," § 404.

What constitutes check, see "Bills and Notes," § 1.

### § 138.—Duties and liabilities of bank to depositor.

#### *Cross-References.*

Liability of bank to creditors attacking deposit as fraudulent, see "Fraudulent Conveyances," § 242.

Payment of debts in general by checks, see "Payment," §§ 21-23.

#### *Annotation.*

Liability for loss of deposit through failure of bank.—14 L. R. A. 103, note.

Drawee's duty to know signature of drawer.—27 L. R. A. 635, note.

### § 139.—Notice not to pay or revocation of check.

### § 140.—Obligation of bank to payee or holder.

#### *Cross-Reference.*

Suing on unaccepted check, see post, § 155.

#### *Annotation.*

Check or bill issued, or indorsed, to imposter—who must bear loss.—50 L. R. A. 75; 17 L. R. A. (N. S.) 514; 38 L. R. A. (N. S.) 1111, notes.

(a) The facts that plaintiff, who deposited money in the name of her nieces, but subject to plaintiff's order, accepted deposit books containing a by-law permitting parents to deposit for children, and that plain-



tiff stood in loco parentis to the nieces, is not sufficient to show that the deposits were made for the benefit of the nieces, thereby justifying the bank in refusing to allow plaintiff to withdraw them, if plaintiff did not intend to make a gift to the nieces, and did not tell them of the deposits, or relinquish control of them.—*Savings Bank of Baltimore v. McCarthy*, 89 Md. 194, 42 Atl. 929.

(b) When payment of a check upon a bank is refused, the recourse of the holder is against the drawer, and not against the bank, even though the bank, at the time the check was presented for payment, held funds of the drawer sufficient to meet the check. The drawee owes no duty to the holder until the check is presented and accepted. A drawee cannot be held liable to the holder for refusal to accept unless it be on the ground of fraud and loss to the latter.—*Moses v. Franklin Bank*, 34 Md. 574.

#### § 141.—Mode and sufficiency of payment.

##### *Cross-References.*

Repayment of deposits in general, see ante, § 133.

Medium of payment, see "Payment," §§ 1-35.

(a) In an action to recover from a bank in B. a sum of money in gold deposited in the bank, the plaintiff introduced in evidence an entry in his bank book as follows: "In 1861, Dec. 30. Cash (coin), \$3,000." *Held*, that evidence was admissible to prove that, according to the general and well-known usage of the banks in B. existing before and at the time of the deposit in question and ever since, the entry offered in evidence imported an agreement on the part of the bank to return the deposit in kind, and that by usage the striking of balances subsequently to such entry, did not work any change in the character of the particular deposit, where the balances were always more than the amount of the deposit.—*Chesapeake Bank v. Swain*, 29 Md. 483. [*Cited and annotated* in 21 L. R. A. 445, on banking customs; in 29 L. R. A. 523, on special obligations for payment in gold or silver.]

(b) Where money deposited by one in a bank is used by the latter in payment of

notes issued by it, and commonly called "Counter tickets," the bank is liable to the depositor for the full amount deposited.—*City Bank v. Bateman*, 7 H. & J. 104.

#### § 142.—Rights of bank paying check.

##### *Cross-Reference.*

Recovery of payment, see "Payment," § 89.

(a) A bank must know the state of its depositor's account, and, where a check by a depositor is paid on presentation, the rights of the payee are conclusively settled, in the absence of fraud on his part, though the depositor had no funds on deposit.—*National Exch. Bank of Baltimore v. Ginn & Co.*, 114 Md. 181, 78 Atl. 1026.

(b) A bank paying a check of a depositor who is a debtor, in ignorance of the depositor's insolvency at the time, may not recover the amount paid to the holder in order that its right of set-off against the depositor may be utilized, each party concerned acting in good faith, and the depositor, when drawing the check, having funds in the bank.—*National Exch. Bank of Baltimore v. Ginn & Co.*, 114 Md. 181, 78 Atl. 1026.

(c) A trustee drew a check on the trust fund, and gave it to defendant in payment of a debt which had no connection with that fund, but which was a debt against another estate, of which also the drawer was a trustee. Defendant, in good faith, and without notice of the misappropriation, presented the check to the bank, and obtained the money. The bank, having been compelled to make good the misappropriation, brought an action to recover the amount of the check from defendant. *Held*, that, as between the bank and the defendant, the payment of the check by the bank was a finality, and conclusively binding on the bank.—*Manufacturers' Nat. Bank v. Swift*, 70 Md. 515, 17 Atl. 336, 14 Am. St. Rep. 381.

#### § 143.—Liability of bank to drawer for refusal to pay.

##### *Cross-Reference.*

Actions for deposits, see post, § 154.

##### *Annotation.*

Liability of bank for refusal to pay checks.—15 L. R. A. 134, note.

**§ 144. Notes payable at bank.***Cross-Reference.*

Vesting of depositor's title in receiver as affecting right of bank to apply deposit on note, see "Receivers," § 70.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 145. Certified checks or notes.***Cross-References.*

Certifying check as discharging drawer, see "Bills and Notes," § 425.

Notice to bank of loss of certified check and direction by maker not to pay as affecting rights of bona fide holder, see "Bills and Notes," § 382.

Payment of debts by certified checks, see "Payment," § 22.

(a) A bank which, by mistake, has certified a promissory note, made payable at its banking house, to be "good," can correct such mistake before rights or liabilities have been incurred or losses sustained in consequence of its action.—*Second Nat. Bank v. Western Nat. Bank*, 51 Md. 128, 34 Am. Rep. 300.

**§ 146. Payment of lost or stolen paper.***Cross-References.*

Laws relating to payment and cancellation of lost certificates as impairing obligation of contract, see "Constitutional Law," § 154.

Presumption of payment from lapse of time, see "Payment," § 66.

**§ 147. Payment of forged or altered paper.***Cross-References.*

Certified check, see ante, § 145.

Collection of forged or altered paper, see post, § 174.

Forgery of checks, see "Forgery."

Rights and liabilities as between banks, see post, § 149.

*Annotation.*

Right of drawee of forged check or draft to recover money paid thereon.—10 L. R. A. (N. S.) 49; 25 L. R. A. (N. S.) 1308; 29 L. R. A. (N. S.) 100, notes.

**§ 148.—Liabilities of bank to depositor, payee, or owner.***Annotation.*

Liability to depositors for payment of altered or raised check or forged paper.—2 L. R. A. 96; 7 L. R. A. 596, 849; 12 L. R. A. 793, notes.

Duty of depositor in respect to forged checks charged to him by the bank.—27 L. R. A. 426; 36 L. R. A. 539, notes.

Right of drawee of forged check or draft to recover money paid thereon.—10 L. R. A. (N. S.) 49; 25 L. R. A. (N. S.) 1308; 29 L. R. A. (N. S.) 100, notes.

(a) A bank is presumed to know the signatures of its dealers. It pays forged checks at its peril.—*Hardy v. Chesapeake Bank*, 51 Md. 562, 34 Am. Rep. 325. [Cited and annotated in 36 L. R. A. 539, on liability on forged commercial paper.]

(b) The presumption of correctness arising from the fact that after a bank account has been balanced, and the book and the canceled checks returned to the customer, a reasonable time for examining and comparing the checks and account has elapsed without objection being made, proceeds upon the ground simply of an implied admission. It is liable to be repelled by showing that an error or fraud,—for instance, a forgery by the customer's confidential clerk,—was not discoverable by the exercise of reasonable care and diligence, or that there was no such appearance of things as to excite the suspicion of a reasonable man, or that, for any reason, the party had not had an opportunity to examine the account.—*Hardy v. Chesapeake Bank*, 51 Md. 562, 34 Am. Rep. 325. [Cited and annotated in 27 L. R. A. 426, 430, on depositor's duty as to forged checks charged to him by bank; in 20 L. R. A. (N. S.) 80, on loss or prejudice from negligent failure to give prompt notice of forgery of check as condition of bank's exoneration from liability.]

(c) A customer of a bank, who has a deposit account, and is in the habit of drawing checks thereon, and who, by words or acts, causes the bank, acting upon such reasonable grounds as prudent business men generally act, to make payment on a forged check, will not be allowed, as against the bank, to set up the forgery.—*Hardy v. Chesapeake Bank*, 51 Md. 562, 34 Am. Rep. 325. [Cited and annotated in 36 L. R. A. 539, on liability on forged commercial paper; in 7 L. R. A. (N. S.) 750, on effect of intrusting examination of vouchers to guilty employee, on right to recover amount of forged or raised checks paid by bank.]

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

**§ 149.—Rights and liabilities as between banks.**

*Cross-References.*

Transactions through clearing house, see post, § 320.

Recovery of payments on forged instruments in general, see "Bills and Notes," § 434.

(a) Defendant bank received in the course of business a forged check on deposit, and sent it through the clearing house, for payment, to plaintiff, another bank, on whom such check was drawn, apparently by one of its depositors. Plaintiff bank received the check as genuine, and paid it, and thereafter defendant paid over the greater part of the money to the person who made the deposit. *Held*, in an action to recover the money paid on the forged check, that the sending of such check through the clearing house to the plaintiff, and the failure to inform plaintiff that it had been received from a stranger, was not such negligence as would throw the loss on defendant, but that defendant was liable to plaintiff for such portion of the money received on the forged check as had not been paid to the party presenting it.—*Commercial & Farmers' Nat. Bank v. First Nat. Bank*, 30 Md. 11, 96 Am. Dec. 554. [Cited and annotated in 27 L. R. A. 635, on drawee's duty to know drawer's signature; in 10 L. R. A. (N. S.) 51, 54, 57, 60, on drawee's right to recover money paid on forged paper.]

(b) The defendant, a bank, without suspicion of forgery, received in the course of business a forged check on deposit, and sent it through the clearing house for payment to the plaintiff, another bank, on whom such check purported to be drawn by one of the plaintiff's depositors, and indorsed to the order of the person presenting it. The plaintiff received the check as genuine, and paid the amount, and the defendant thereafter paid the greater part of the money to the party who made the deposit. Plaintiff sued for the money so paid on the forged check. *Held*, that the law imposed on the plaintiff the obligation of knowing the signatures of its depositors, and that the defendant was not liable for such money received on the forged check as had been paid to the person presenting it.—*Commercial & Farmers' Nat. Bank v. First Nat.*

*Bank*, 30 Md. 11, 96 Am. Dec. 554. [Cited and annotated in 27 L. R. A. 635, on drawee's duty to know drawer's signature.]

**§ 150. Overdrafts.**

*Cross-References.*

See ante, § 125.

Estoppel of bank to sue president for loss in permitting overdrafts, see ante, § 54.

Obligation of bank to payee or holder of check in excess of deposit, see ante, § 140.

Affecting mechanic's lien against cashier, see "Mechanics' Liens," § 238.

Enforcement by holder of check of contract by bank to pay, see "Contracts," § 187.

Payment by note, see "Payment," § 17.

**§ 151. Depositors' pass books and accounts.**

*Cross-References.*

See ante, § 148.

Passbooks and vouchers as account stated, see "Account Stated," § 6.

Passbooks as evidence, see "Evidence," § 354.

Validity of agreement to prove loss of bank book to satisfaction of trustees or treasurer, see "Contracts," § 127.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 152. Certificates of deposit.**

*Cross-References.*

Agreement to pay certificate assigned as within statute of frauds, see "Frauds, Statute of," § 28.

As negotiable instruments, see "Bills and Notes," §§ 42, 147, 151.

Effect of assignment, see "Assignments," § 73.

False pretenses on attempting to cash, see "False Pretenses," § 51.

Forgery, see "Forgery," § 27.

Intent of depositor to receive new certificate in payment as question for jury, see "Payment," § 76.

Intervention of payee of certificate in action by holder, see "Parties," § 40.

Larceny, see "Larceny," § 5.

Laws relating to payment and cancellation of lost certificates as impairing obligation of contract, see "Constitutional Law," § 154.

Limitation in general as to actions thereon, see "Limitation of Actions," §§ 48, 66.

Necessity for consideration for guaranty by director of certificate, see "Guaranty," § 14.

Presentment, demand, notice and protest, see "Bills and Notes," §§ 385-424.

Presumption of payment, see "Payment," § 66.

Transfer by holder in payment of debt, see "Payment," § 18.

What law governs as to liability on certificate transferred under gambling contract, see "Gaming," § 2.

*Annotation.*

Certificates of deposits.—46 L. R. A. 809; 39 L. R. A. (N. S.) 114, notes.

Maturity of certificates of deposits.—15 L. R. A. 386, note.

(a) S. S. deposited money in a bank, and received a certificate of deposit payable "to the order of himself, or E. S. (his wife), on the return of this certificate." *Held*, that the bank was liable for paying to E. S. after notice of the death of S. S., and that notice to the paying teller was notice to the bank.—Second Nat. Bank v. Wrightson, 63 Md. 81.

(b) Where a negotiable certificate of deposit is in the hands of a third person, and there is no proof to show that it was not properly indorsed to him by the payee, he may have a legal right to demand payment; and the bank issuing the certificate has, therefore, a right to demand delivery of the same when called upon by the payee to pay the debt for its protection against the claim of the third party.—Fells Point Sav. Inst. v. Weedon, 18 Md. 320, 81 Am. Dec. 603. [Cited and annotated in 15 L. R. A. 387, on maturity of certificate of deposit; in 29 L. R. A. (N. S.) 687, as to when statute begins to run on certificate of deposit.]

(c) A certificate of deposit issued by a savings institution payable to G. F. Allen or order is a negotiable instrument, and must be produced and delivered up upon demand for payment.—Fells Point Sav. Inst. v. Weedon, 18 Md. 320, 81 Am. Dec. 603. [Cited and annotated in 15 L. R. A. 387, on maturity of certificate of deposit.]

(d) The Marine Bank issued a certificate of deposit, payable to A. or order. The indorsement of A. was afterwards forged upon it, and it was passed to B. bona fide, for value. B. remitted it to C., and C. to D., who, being a customer of the Merchants' Bank, deposited it with the latter bank for collection, and was credited with the amount. The Marine Bank paid the amount to the Merchants' Bank, but afterwards discovered the forgery, demanded back the money, and paid the amount to the rightful payee. At the time of the payment to the

Merchants' Bank, D. had an amount to his credit at the bank larger than the amount of the certificate. A few days afterwards it was less, but at the time of the discovery of the forgery, and notice thereof, it was again greater. In an action by the Marine Bank against the Merchants' Bank to recover back the amount, it was *held* that the latter bank was not a bona fide holder for value, as the credit to D., on the books of the bank, of the amount of the draft, was not conclusive upon the bank, but might be corrected on discovery of the forgery; and therefore the Marine Bank was entitled to recover back the amount paid.—Merchants' Bank v. Marine Bank, 3 Gill 96, 43 Am. Dec. 300.

(c) A bank issued a certificate of deposit to one "J. Strodtmann," receiving his signature, which was placed in its books. The bank mailed such certificate to the payee at a distant place, but it was received by another, who forged the payee's name, and negotiated it to a bona fide purchaser for value, and it was thereafter successively indorsed several times. The last holder obtained payment thereof, the forgery being then unknown. The forged name contained only one "n." *Held*, that the last holder, being a bona fide purchaser for value, was not liable to refund the amount to the bank which had been obliged to pay it to the real payee.—Merchants' Bank v. Marine Bank, 3 Gill 96, 43 Am. Dec. 300.

### § 153. Special deposits.

#### *Cross-Reference.*

Presumptions and burden of proof, see post, § 154.

#### *Annotation.*

Care required of bank in keeping special deposit.—32 L. R. A. 769, note.

When a bank deposit is special, and title thereto in the depositor.—16 L. R. A. 516; 39 L. R. A. (N. S.) 847, notes.

(a) A bank issued to a depositor a certificate of deposit payable to the order of himself or his wife. After notice of the death of the depositor the bank paid the money to the wife, and part of it was used by her in paying the funeral expenses of the husband, the executor obtaining credit in his administration account for the amount so used. On a bill by the bank to enjoin a suit at law to recover the money represented by the cer-

tificate, the court allowed the bank credit for the amount used by the wife in payment of the funeral expenses. *Held*, no error.—*Second Nat. Bank v. Wrightson*, 63 Md. 81. [Cited and annotated in 28 L. R. A. (N. S.) 807, on relief from mistake of law as to effect of instrument.]

(b) Where bonds are deposited with bankers for safekeeping, they are liable for a loss occurring through a failure to use such care as persons of common prudence, in their situation and business, usually bestow in the custody and keeping of similar property belonging to themselves.—*Maury v. Coyle*, 34 Md. 235. [Cited and annotated in 32 L. R. A. 772, on care required of bank in keeping special deposit.]

(c) Where, under a previous agreement, A. sent to a bank a special deposit in gold, it was *held* that the subsequent payment of checks and the striking of balances, which on each occasion were larger than the special deposit, would not necessarily extinguish the special deposit, if from the facts and circumstances the parties had a different intention, and such intention was a subject of inquiry for the jury.—*Chesapeake Bank v. Swain*, 29 Md. 483. [Cited and annotated in 21 L. R. A. 445, on banking customs; in 29 L. R. A. 523, on special obligations for payment in gold or silver.]

#### § 154. Actions by depositors or others for deposits.

##### Cross-References.

Liability for failure to pay check, see ante, § 143.

Against bankrupt after discharge, see "Bankruptcy," § 436.

Interest as element of recovery, see ante, § 132.

To enforce liability of stockholders, see ante, § 49.

Assignability of depositor's right of action on personal obligation of banker to repay deposit, see "Assignments," § 23.

Election of remedy, see "Election of Remedies," § 3.

Recovery of interest as distinct cause of action, see "Interest," § 62.

Limitations in general, see "Interest," § 62; "Limitation of Actions," §§ 21, 25, 48, 49, 66, 80, 104.

Necessity of demand before suing for deposit wrongfully paid out as affecting interest, see "Interest," § 46.

Bringing in new parties, see "Parties," § 51.

Bringing suit in name of real party in interest, see "Parties," § 6.

Amendment changing cause of action, see "Pleading," § 248.

Judgment on pleadings, see "Pleading," § 349.

Necessity of pleading want of demand of interest on deposit, see "Interest," § 66.

As to payment of depositor's debt to bank, see "Payment," §§ 67, 70.

Testimony as to transactions with persons since deceased, see "Witnesses," §§ 133, 140, 149.

Conclusiveness of judgment, see "Judgment," § 715.

(a) In an action by a bank depositor for a balance claimed to be due, the plaintiff identified two bank books as those issued to him, which when issued contained extracts from the by-laws of the bank, one relating to the depositor's right of withdrawal, but which were blank on the line for the bank president's signature thereto, and showed deposits made and accepted with reference to the by-laws for two years. *Held*, that the books were admissible to show deposits and withdrawals, and the conditions on which deposits could be withdrawn.—*Marine Bank of Crisfield v. Stirling*, 115 Md. 90, 80 Atl. 736.

(b) In an action by a depositor for the balance of a deposit, where the bank claimed that his account was overdrawn \$5,700 at about the time the bank's report was published, which showed total overdrafts, \$82.04, and there was evidence in explanation that the defendant did not discover all the plaintiff's checks until afterwards, a copy of the report offered by plaintiff and admitted to be such by the bank's president was admissible.—*Marine Bank of Crisfield v. Stirling*, 115 Md. 90, 80 Atl. 736.

(c) In an action by a bank depositor for the balance of the deposit, it is proper to instruct that the burden was upon the defendant to establish its defense of set-off by a preponderance of evidence, and, if the minds of the jury were in an even balance as to whether anything was due the defendant under the set-off, then they should find for the plaintiff, it having no tendency to mislead the jury as to burden of proof.—*Marine Bank of Crisfield v. Stirling*, 115 Md. 90, 80 Atl. 736.

(d) In an action by a bank depositor for a balance claimed to be due, where the defense of set-off was based on the claim that

the plaintiff had overdrawn his account, the burden of proving the set-off was upon the defendant.—*Marine Bank of Crisfield v. Stirling*, 115 Md. 90, 80 Atl. 736.

(e) In an action by H. against a bank to recover the amount of an alleged balance due him as depositor, it being alleged that certain checks paid were forged, H. may give in evidence his check book containing the stubs of checks, for the purpose of showing, not the truth of any entry therein, or the fact that any particular entry had been herein made, but that there was not in fact anything disclosed therein, upon ordinary inspection, calculated to excite suspicion that a fraud had been committed by the party in whose custody it had remained.—*Hardy v. Chesapeake Bank*, 51 Md. 562, 34 Am. Rep. 325. [*Cited and annotated* in 27 L. R. A. 425, 430, on depositor's duty as to forged checks charged to him by bank; in 36 L. R. A. 539, on liability on forged commercial paper.]

(f) In an action against a bank to recover a deposit, what is lawful money of the United States other than gold and silver coin is a question of law, to be decided by the court, and not a question of fact for the jury.—*Chesapeake Bank v. Swain*, 29 Md. 483. [*Cited and annotated* in 29 L. R. A. 523, on special obligations for payment in gold or silver; in 29 L. R. A. 593, on form of judgment and procedure for payment in coin.]

(g) Upon a certificate of deposit given by an institution for savings, where the certificate expressly states that the amount deposited is payable on return of the certificate, the object of deposit being the accumulation of interest, the statute of limitations cannot be held to run until demand is actually made.—*Fells Point Sav. Inst. v. Weedon*, 18 Md. 320, 81 Am. Dec. 603. [*Cited and annotated* in 29 L. R. A. (N. S.) 687, as to when statute begins to run on certificate of deposit.]

(h) A notification by a bank to a depositor that his claim, which is payable on demand, will not be paid on demand at the counter, dispenses with the necessity of a demand as preliminary to a right to sue.—*Farmers' &*

*Mechanics' Bank v. Planters' Bank*, 10 G. & J. 422.

(i) Notification by a bank to a depositor whose deposit is payable on demand, without any demand made that his claim will not be paid on demand at the counter, will start limitations running against the recovery by the depositor of his claim from the bank.—*Farmers' & Mechanics' Bank v. Planters' Bank*, 10 G. & J. 422. [*Cited and annotated* in 2 L. R. A. (N. S.) 572, on demand for bank deposit to start limitations running.]

(j) The statute of limitations begins to run against a depositor in a bank, which has suspended specie payments and discontinued banking operations, from the time when he obtains knowledge of such facts.—*Planters' Bank v. Farmers' & Mechanics' Bank*, 8 G. & J. 449; *Union Bank v. Planters' Bank*, 9 G. & J. 439, 31 Am. Dec. 113.

(k) A usage, established by proof, that current deposits made in a bank, and the proceeds of notes and drafts placed for collection, are to be paid to the depositor, on demand, at the counter of the bank, would prevent the running of the statute of limitations against such depositor until payment of his claim had been refused, or some act done, with his knowledge, dispensing with the necessity of such demand.—*Planters' Bank v. Farmers' & Mechanics' Bank*, 8 G. & J. 449. [*Cited and annotated* in 21 L. R. A. 446, on banking customs; in 2 L. R. A. (N. S.) 572, on demand for bank deposit to start limitations running.]

(l) A suspension of specie payments by a bank, and a discontinuance of banking operations, dispense with the necessity of a demand for a deposit if such facts were known to the depositor.—*Planters' Bank v. Farmers' & Mechanics' Bank*, 8 G. & J. 449.

(m) Plaintiff having proved ownership of certain moneys which had been deposited in defendant bank, testimony of one of the latter's clerks that the president and cashier had directed that such money be paid out in discharge of debts of the bank is admissible, such officers having authority to make such directions.—*City Bank v. Bateman*, 7 H. & J. 104.

### § 155. Actions by payees or holders of checks against bank.

#### *Cross-References.*

By national banks, see post, § 268.

For negligence of bank in making collections, see post, § 175.

Application of general statute of limitation, see "Limitation of Actions," § 25.

Decision on trial by court without jury, see "Trial," § 387.

Demand as affecting limitations, see "Limitation of Actions," § 66.

Existence of trust as affecting limitations, see "Limitation of Actions," § 103.

Intervention of payee of certificate of deposit in action by holder, see "Parties," § 40.

Limitations in general as to liability of stockholders, see "Limitation of Actions," § 58.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### (D) COLLECTIONS.

#### *Cross-References.*

Representation of bank by officers and agents, see ante, § 107.

Knowledge of custom as to collections, see "Customs and Usages," § 12.

Nature and form of remedy for negligence or default, see "Action," § 27.

### § 156. Relation between bank and depositor for collection.

#### *Annotation.*

For whom is collecting bank agent?—2 L. R. A. 699, note.

### § 157. Power and duty to make collections.

### § 158. Making, receipt, and entry of deposit for collection.

### § 159. Title to paper received for collection.

### § 160. Authority and acts in making collection.

### § 161.—Banks in general.

#### *Annotation.*

Sending checks directly to drawee bank.—27 L. R. A. 248; 18 L. R. A. (N. S.) 441, notes.

### § 162.—Agents and correspondents.

#### *Cross-Reference.*

Effect of customs and usages, see ante, § 161.

### § 163. What constitutes collection.

### § 164. Rights and liabilities as to proceeds.

### § 165.—In general.

(a) Where holder of an acceptance of a

draft indorses it to one bank "for collection," which in turn indorses it to another bank for the same purpose, the first indorsement is notice to the latter bank that the first indorser is the owner and the first bank merely agent for collecting the acceptance, so that the second bank cannot detain the proceeds for payment of the general balance of their account with the other bank.—Cecil Bank v. Farmers' Bank, 22 Md. 148.

### § 166.—Insolvency of collecting bank.

#### *Cross-Reference.*

Evidence, see post, § 227.

#### *Annotation.*

Trust in proceeds of collection made by bank when insolvent.—32 L. R. A. 715; 38 L. R. A. (N. S.) 146, notes.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 167.—Insolvency of transmitting bank.

(a) An indorsement of a draft to a bank "for collection," accompanied by a credit of the amount of the draft upon the indorser's account with the bank, does not transfer to the bank the legal title to such draft, and a correspondent of the bank, who collects the draft for it, is responsible therefor to the indorser.—Tyson v. Western Nat. Bank, 77 Md. 412, 26 Atl. 520, 23 L. R. A. 161. [Cited and annotated in 7 L. R. A. (N. S.) 696, on bank's title to deposited check on other bank.]

### § 168. Payment of proceeds.

### § 169.—Liability in general.

#### *Annotation.*

Duty and liability of collecting bank.—2 L. R. A. 700; 3 L. R. A. (N. S.) 1167; 8 L. R. A. 44, notes.

(a) A bank receiving a draft for collection is liable in an action for money had and received to the true owner, provided notice of such ownership is given before the proceeds are paid over to the depositor of the draft.—Union Bank v. Johnson, 9 G. & J. 297.

### § 170.—Negligence or default of agents or correspondents.

### § 171. Failure to collect.

(a) Where a bank becomes liable for negligence in failing to collect a draft, and returns it protested to the payee, the subsequent payment by the drawer to the payee,

made in ignorance of the negligence, will not relieve the bank from liability to the payee for the use of the drawer.—*Merchants' Bank v. Bank of Commerce*, 24 Md. 12. [*Cited and annotated in 3 L. R. A. (N. S.) 1170, on diligence by bank in collecting check.*]

(b) *H. & Co.*, of New York, drew a draft on *L. & Co.*, of Baltimore, and sold it to a New York bank, which latter bank sent the draft to its correspondent, a Baltimore bank, for collection. Through the negligence of the Baltimore bank, the draft was not collected, and, *L. & Co.* having failed in business, the draft was protested, and returned to the bank in New York, which notified *H. & Co.* of the fact of the dishonor, who, ignorant of the fact of the negligence, paid the amount of the draft. On a suit brought by the New York bank, for the use of *H. & Co.*, against the Baltimore bank, *held*, that as the amount of the draft was paid by *H. & Co.* under a mistake that entitled them to a return of the money, the plaintiff should be regarded as having received it for their use, and as holding it subject to their order.—*Merchants' Bank v. Bank of Commerce*, 24 Md. 12. [*Cited and annotated in 3 L. R. A. (N. S.) 1170, on diligence by bank in collecting check.*]

#### § 172. Failure to fix liability of indorser or of drawer of check or draft.

(a) Where a check on itself is sent to a bank for collection, the bank becomes the agent of the person sending it, and is liable to the latter for damage caused by its failure to give notice to the drawer of non-payment.—*Exchange Bank v. Sutton Bank*, 78 Md. 577, 28 Atl. 563, 23 L. R. A. 173.

(b) It is the duty of banks, receiving notes for collection in the ordinary course of business, without any agreement on the subject, to place them in the hands of a notary, that they may be protested in due time when necessary; and if the bank in due time delivers the notes to the notary usually employed by it in such matters, so that the necessary demand, protest and notices may be made and given, the bank will not be answerable for loss resulting from the failure of the notary to perform his duty.—*Citizens'*

*Bank of Baltimore v. Howell*, 8 Md. 530, 63 Am. Dec. 714.

#### § 173. Collection of lost or stolen paper.

#### § 174. Collection of forged or altered paper.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 175. Actions for negligence or default.

##### Cross-References.

Appellate jurisdiction of action for failure to collect draft as dependent on amount or value in controversy, see "Courts," § 219.

Implied contract or tort, see "Action," § 27.

(a) In an action against a bank for negligence in failing to collect a draft, it was not essential to plaintiff's right to recover that the jury should find that the draft was returned to defendant after defendant had redelivered it to plaintiff.—*Merchants' Bank v. Bank of Commerce*, 24 Md. 12. [*Cited and annotated in 3 L. R. A. (N. S.) 1170, on diligence by bank in collecting check.*]

(b) In an action against a bank for negligence in failing to present a draft for payment, an instruction submitted to the jury, as a fact bearing on the issue of negligence, the question of the "doubtful credit" of the drawees, without requiring them to find that defendant had knowledge of it at the time. *Held*, that the words "doubtful credit" are very comprehensive, and, when used without words of limitation or qualification, are understood to relate to reputation or standing in the community, as distinguished from the estimate of particular individuals. In that sense the doubtful credit of a party is a matter of fact of which persons in the community may be presumed to have knowledge.—*Merchants' Bank v. Bank of Commerce*, 24 Md. 12. [*Cited and annotated in 3 L. R. A. (N. S.) 1170, on diligence by bank in collecting check.*]

#### (E) LOANS AND DISCOUNTS.

##### Cross-References.

By bank for others, see post, § 195.

By national banks, see post, §§ 269, 270.

By savings banks, see post, § 302.

Negligence of officers and agents in respect to loans and discounts, see ante, § 54.



Power of bank to borrow money, see ante, § 97.

Representation of bank by officers and agents, see ante, § 108.

Trust companies, see post, § 315.

Discount of note void for usury, see "Bills and Notes," § 332.

Liability of director for oral misrepresentations made in offering paper to bank for discount, see "Frauds, Statute of," § 38.

Liability of loans to taxation, see "Taxation," § 131.

Lien of bank on property purchased with money loaned, see "Liens," § 3.

Promise by cashier to repay loan made to another as within statute of frauds, see "Frauds, Statute of," § 23.

Right of bank to equitable lien on proceeds of collateral security, see "Liens," § 7.

Right of officer to act as trustee in deed of trust to bank, see "Mortgages," § 24.

Rights as assignee or pledgee of bill of lading, see "Carriers," § 58.

#### § 176. Power to make loans in general.

#### § 177. Power of discount.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

#### § 178. Requisites and validity of loan or discount.

##### *Annotation.*

Purchase of notes and bills by bank as distinguished from discounting.—16 L. R. A. 223, note.

(a) Where the charter of a bank prohibited the corporation from loaning any of its funds to any of the directors, and such a loan was made, and stock was transferred to it as collateral security for the loan, it was held that the bank acquired no title to nor interest in the stock transferred to it, and, if any injury accrued to a third party from its acts, it was responsible to such third party.—*Albert v. Mayor, etc., of Baltimore*, 2 Md. 159.

#### § 179. Collateral security.

##### *Cross-Reference.*

Rights of officer to act as trustee in deed of trust to bank, see "Mortgages," § 24.

(a) A bank surrendered a note, taking therefor a new note, in which was included the amount of the original, and also an additional loan. Held, that, as to the first, this transaction did not constitute a new loan, relieving the bank from the results of having negligently made the original loan on the faith of a forged collateral.—*Metropolitan Sav. Bank v. Baltimore*, 63 Md. 6.

(b) Where one who is indebted to a bank, upon demand to furnish security, procures an accommodation note, and indorses it to the bank, an agreement between the maker and the indorser that the note is to secure only future discounts, and not past indebtedness, will not bind the bank, unless it has knowledge thereof.—*Maitland v. Citizens' Nat. Bank*, 40 Md. 540, 17 Am. Rep. 620.

(c) A banker or broker who has advanced money to his customer has a lien on all securities of the latter in his hands for the amount of the general balance, unless such securities are held under some special agreement.—*Miller v. Farmers' & Mechanics' Bank*, 30 Md. 392.

(d) Wherever a banker has advanced money to another, he has a lien on all paper securities in his hands for the amount of his general balance, unless such securities were delivered to him under a special agreement.—*Baltimore & O. R. Co. v. Wheeler*, 18 Md. 372.

#### § 180. Loans to stockholders, and stock as security.

##### *Cross-Reference.*

Lien in general, see ante, § 42.

#### § 181. Interest or rate of discount, and usury.

##### *Cross-References.*

On overdrafts, see ante, § 150.

On discounted note void for usury, see "Bills and Notes," § 332.

#### § 182. Application of proceeds.

#### § 183. Rights and liabilities as to paper discounted.

#### § 184. Renewal of loan or of paper discounted.

#### § 185. Repayment of loans.

(a) A defendant cannot retain in his hands the amount specified in the promissory note on which the action is brought by a bank, although the bank may have in its possession money, dividends of stock, or other profits, to the same or greater amount, belonging to the defendant. He can only claim to have deducted from the note, money or other funds in the possession of the bank belonging to him.—*Whittington v. Farmers' Bank*, 5 H. & J. 489.

#### § 186. Discount of forged or fraudulent paper.

**§ 187. Actions on loans or on paper discounted.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**(F) EXCHANGE, MONEY, SECURITIES, AND INVESTMENTS.**

*Cross-References.*

Investments by savings banks, see post, § 302.

Representation of bank by officers and agents, see ante, § 109.

Liability of investments and securities to taxation, see "Taxation," § 131.

**§ 188. Power to deal in exchange, money, and securities.**

**§ 189. Issue and payment of drafts.**

*Cross-References.*

See ante, § 148.

Liability of telegraph company for false or forged messages causing bank to pay worthless drafts, see "Telegraphs and Telephones," § 41.

**§ 190. Payment of forged or altered paper.**

**§ 191. Letters of credit.**

*Cross-Reference.*

Importations under letters of credit, nature of transaction as affecting rules applicable to secured claims against insolvent's estate, see "Insolvency," § 108.

**§ 192. Purchase and sale of exchange.**

**§ 193. Purchase and sale of money or bullion.**

**§ 194. Purchase and sale of stock or securities.**

**§ 195. Loans and investments by bank for others.**

*Cross-Reference.*

Actions for bank's negligence or fraud, see post, §§ 213-231.

**(G) CIRCULATING NOTES.**

*Cross-References.*

National banks, see post, § 272.

Rights of holders on insolvency of bank, see ante, § 79.

Description in indictment, see "Indictment and Information," § 103.

Subject of larceny, see "Larceny," § 5.

Title to stolen bank bill acquired by bona fide purchaser, see "Bills and Notes," § 363.

**§ 196. Nature and requisites.**

**§ 197. Power to issue or circulate.**

**§ 198. Restrictions upon issue or circulation.**

**§ 199. Deposit of security.**

**§§ 200-204. Unauthorized issue.**

**§ 205. Taxation.**

*Cross-Reference.*

Origin of revenue bills, see "Statutes," § 6.

**§ 206. Penalties for failure to keep notes at par.**

**§§ 207-210. Payment or redemption.**

**§ 211. Liability of stockholders or officers.**

**§ 212. Actions on notes or for nonpayment thereof.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**(H) ACTIONS.**

*Cross-References.*

Bank in process of liquidation, see ante, § 73.

By depositors or others for deposits, see ante, § 154.

By or against national banks, see post, §§ 278-280½.

By or against savings banks, see post, § 306.

By payees or holders of checks, see ante, §§ 143, 155.

Enforcement of liability of bank officers, see ante, § 55.

For negligence of bank in making collections, see ante, § 175.

On loans or on paper discounted by bank, see ante, § 187.

On overdrafts, see ante, § 150.

Representation of bank by officers and agents, see ante, § 110.

For deceit, see "Fraud," §§ 31-67.

Interpleader, see "Interpleader," § 11.

Joinder of causes of action, see "Action," § 48.

Removal of causes, see "Removal of Causes," § 82.

Testimony as to transactions with persons since deceased, see "Witnesses," §§ 133, 139, 140, 142, 149, 166.

**§ 213. Capacity to sue and be sued.**

**§ 214. (Omitted from the classification used herein.)**

**§ 215. Conditions precedent.**

**§ 216. Nature and form of remedy.**

*Cross-References.*

Actions for negligence or default in making collection, see ante, § 175.

Contract or tort, see "Action," § 27.

**§ 217. Summary remedies.**

**§ 218. Jurisdiction and venue.***Cross-References.*

See "Fraud," § 37.

Appellate jurisdiction of action for failure to collect draft as dependent on amount or value in controversy, see "Courts," § 219.

Federal court's jurisdiction of action on note dependent on diverse citizenship, see "Courts," § 309.

Removal of causes, see "Removal of Causes," § 82.

**§ 219. Time to sue, and limitations.***Cross-References.*

Application of general statute of limitation, see "Limitation of Actions," § 28.

Computation of period, see "Limitation of Actions," § 100.

**§§ 220-222. Parties.***Cross-References.*

Construction of will, see "Wills," § 700.

Intervention of payee of certificate of deposit in action by holder, see "Parties," § 40.

**§ 223. Process and appearance.****§ 224. Attachment and garnishment.***Cross-References.*

Attachment of assets of insolvent bank in hands of bank examiner, see ante, § 76.

Liability of bank or deposits to garnishment, see "Garnishment," §§ 19, 56.

*Annotation.*

Garnishment of contents of safe deposit box.—41 L. R. A. (N. S.) 764, note.

**§ 225. Injunction and receiver.***Cross-References.*

Action for overdraft, see ante, § 150.

Necessity for pleading want of demand of interest on deposit, see "Interest," § 66.

**§ 226. Pleading.****§ 227. Evidence.***Cross-References.*

Of authority of officers or agents, see ante, § 118.

Testimony as to transactions with persons since deceased, see "Witnesses," §§ 133, 139, 140, 142, 149, 166.

Presumption that check deposited with bank was issued for valuable consideration, see "Bills and Notes," § 497.

Action for overdraft, see ante, § 150.

Competency of rules of clearing house, see post, § 320.

(a) In an action by a bank on a promissory note, defendant offered to read in evidence certain proceedings of the plaintiff's directors, with a view to showing that there were not a sufficient number of directors present to transact business at the time a

certain order was made pursuant to which funds had been withdrawn, and whereby he, as a stockholder, had been deprived of a dividend. *Held*, that the evidence was not admissible.—*Whittington v. Farmers' Bank of Somerset*, 5 H. & J. 489.

**§ 228. Trial.***Cross-Reference.*

Facts and conclusions to be found by court, see "Trial," § 391.

**§ 229. Judgment.***Cross-References.*

Evidence in proceedings for equitable relief, see "Judgment," § 461.

Time for application to vacate, see "Judgment," § 386.

**§ 230. Execution and enforcement of judgment.****§ 231. Costs.***Cross-Reference.*

Liability of stockholders for costs, see "Costs," § 100.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**IV. NATIONAL BANKS.***Cross-References.*

Act providing for license tax as unequal taxation because of non-liability of national banks, see "Licenses," § 7.

Bonds of officers, see "Principal and Surety," §§ 71, 83, 112.

Estoppel to deny corporate powers, see "Corporations," § 383.

Parties to action against officer's assignee in insolvency, see "Insolvency," § 95.

Privileged communications, see "Witnesses," § 196.

Review by United States Supreme Court of decisions of state courts relating thereto, see "Courts," § 394.

Taxation of national banks and bank property, see "Taxation," §§ 10-12, 130, 282, 386, 522.

**§ 232. Nature and status.****§ 233. Power to control and regulate.***Cross-References.*

Regulation and supervision, see post, § 235.

Statutory provisions, see post, § 234.

(a) National banks, as federal agencies, are exempted from state legislation only so far as it may interfere with or impair their efficiency in performing the functions by which they are designed to serve the national government.—*Thomas v. Farmers' Bank*, 46 Md. 43.

### § 234. Statutory provisions.

#### Cross-References.

Power to control and regulate, see ante, § 233.

Construction of banking act by federal courts as binding on state courts, see "Courts," § 97.

Repeal of act conferring original jurisdiction on United States courts of creditors' bill against stockholders, see "Courts," § 256.

Statute empowering comptroller to appoint receivers for insolvent national banks as vesting judicial power, see "Constitutional Law," § 55.

(a) A person appearing on the books of a national bank to be absolute owner of stock is subject to a stockholders' liability, though holding it as trustee.—*Kerr v. Urie*, 86 Md. 72, 37 Atl. 789, 38 L. R. A. 119, 63 Am. St. Rep. 493. (See Rev. St. U. S. §§ 5151, 5152, [U. S. Comp. Stat. 1901, p. 3465; 1913, § 9690—R. S. § 5151, superseded, see Comp. Stat. 1913, p. 4417, note.]) [*Cited and annotated* in 30 L. R. A. (N. S.) 1093, on personal liability of executor, administrator, or trustee on corporate stock standing in his name.]

(b) Where one residing in Maryland subscribes for stock of a national bank of another state, and then transfers it to his wife, also a resident of Maryland, she becomes the owner thereof, and is subject to a stockholder's liability, under Rev. St. U. S. § 5152 (U. S. Comp. Stat. 1901, p. 3465; 1913, § 9690), without regard to the laws of the other state relative to contracts by married women.—*Kerr v. Urie*, 86 Md. 72, 37 Atl. 789, 38 L. R. A. 119, 63 Am. St. Rep. 493.

(c) The cashier of a national bank is the proper person to make the affidavit of the true amount of the indebtedness for which the bank brings suit.—*Parkhurst v. Citizens' Nat. Bank*, 61 Md. 254.

(d) National banks have no power to purchase negotiable paper except from surplus capital.—*Lazear v. National Union Bank*, 52 Md. 78, 36 Am. Rep. 355. [*Cited and annotated* in 16 L. R. A. 224, on bank's purchase of notes and bills as distinguished from discounting.]

(e) No one can recover usurious interest paid to a national bank but the party who paid it, and it cannot be set off or recouped by another party to the paper.—*Lazear v.*

*National Union Bank*, 52 Md. 78, 36 Am. Rep. 355. [*Cited and annotated* in 56 L. R. A. 679, 693, 705, on effect of national bank's taking or reserving illegal interest.]

(f) The thirtieth section of chapter 106 of the national banking act of 1864 (Rev. St. U. S. § 5198 [U. S. Comp. St. 1901, p. 3498; 1913, § 9759]), allowing recovery of double the amount of interest unlawfully taken, is remedial as well as penal, and is to be liberally construed to effect its object. State courts have jurisdiction in cases instituted for such recovery. The judiciary act of 1789, giving the United States district courts exclusive jurisdiction, only contemplates those penalties and forfeitures of a public nature which may be sued for by the government.—*Ordway v. Central Nat. Bank*, 47 Md. 217, 28 Am. Rep. 455. [*Cited and annotated* in 48 L. R. A. 40, on administration of federal laws in state courts; in 56 L. R. A. 674, 691, 692, on effect of national banks taking or reserving illegal interest.]

(g) National banks, as federal agencies, are exempted from state legislation only so far as it may interfere with or impair their efficiency in performing the functions by which they are designed to serve the national government.—*Thomas v. Farmers' Bank*, 46 Md. 43.

(h) Act 1865, c. 144 (see Code, art. 11, § 27), authorizing any state banking institution to become a banking association under the laws of the United States, provided "that said bank may continue to use its corporate name for the purpose of prosecuting and defending suits," etc., simply confers a privilege, and does not conflict with the act of Congress in 1864 requiring national banks to have a corporate name, etc.—*Thomas v. Farmers' Bank of Maryland*, 46 Md. 43. (See Rev. St. U. S. §§ 5134, 5154 [U. S. Comp. St. 1901, pp. 3454, 3466; 1913, §§ 9659, 9694].)

(i) A national bank has power to enter into a contract whereby bonds are deposited with it, as collateral security for call loans.—*Third Nat. Bank v. Boyd*, 44 Md. 47, 22 Am. Rep. 35.

(j) In an action against a national bank, by the senior member of a firm, to recover the value of his bonds that had been depos-

ited with the bank as collateral security for "call loans" to the firm, but, at a time when the firm was not indebted to the bank, had been stolen by burglars, *held*, that the contract entered into by the bank was not a mere gratuitous bailment.—*Third Nat. Bank v. Boyd*, 44 Md. 47, 22 Am. Rep. 35. [*Cited and annotated* in 17 L. R. A. 193, on duty of pledgee as to care of thing pledged; in 32 L. R. A. 769, on care required of bank in keeping special deposit.]

(k) Persons who hold stock in pledge, the certificates of which stand on the books of the bank in the name of the pledgee, are, in the contemplation of the national banking act, stockholders, and, so long as they thus hold the stock in pledge, are responsible to the creditors of the bank in proportion to the amount so held.—*Magruder v. Colston*, 44 Md. 349, 22 Am. Rep. 47. [*Cited and annotated* in 36 L. R. A. 139, 140, on liability of pledgee of stock as shareholder.]

(l) In an action of deceit against a national bank to recover damages for the alleged false representations of its teller in the sale to the plaintiff of certain railroad bonds, *held*, that the selling of railroad bonds on commission was not within the authorized business of a national bank; and, being thus beyond the scope of its corporate powers, the defense of ultra vires was open to it.—*Weckler v. First Nat. Bank*, 42 Md. 581, 20 Am. Rep. 95.

(m) A national bank organized under the Act of Congress approved June 3, 1864, known as the "National Currency Act," has no authority to engage in the business of selling the bonds of railroad companies on commission. Such business is not within the scope of its corporate powers, and is, therefore, prohibited. (See Rev. St. U. S. §§ 5133 *et seq.* [U. S. Comp. St. 1901, pp. 3454 *et seq.*; 1913, §§ 9657 *et seq.*])—*Weckler v. First Nat. Bank*, 42 Md. 581, 20 Am. Rep. 95. [*Cited and annotated* in 16 L. R. A. 223, on bank's purchase of notes and bills as distinguished from discounting.]

(n) A national bank is not responsible for any false representations made by its teller to induce a person to purchase railroad bonds, the selling of such bonds not being within the authorized business of the bank.

—*Weckler v. First Nat. Bank*, 42 Md. 581, 20 Am. Rep. 95.

(o) Under the act of Congress approved March 3, 1873, § 2, amending act June 3, 1864, § 57 (Rev. St. U. S. § 5242 [U. S. Comp. St. 1901, p. 3517; 1913, § 9834]), providing that no attachment shall be issued against a banking association or its property before final judgment, an attachment on warrant issued by a state court, to affect the property of a national bank, is illegal and void.—*Chesapeake Bank v. First Nat. Bank*, 40 Md. 269, 17 Am. Rep. 601.

(p) A national bank may acquire stock, to be afterwards converted into money, provided, such acquisition is not for the purpose of speculation, but merely to avert or diminish an apprehended loss on account of a claim to which the bank has been subjected.—*First Nat. Bank v. National Exch. Bank*, 39 Md. 600. [*Cited and annotated* in 18 L. R. A. 254, on power of corporation to deal in stock.]

## § 235. Regulation and supervision in general.

### Cross-References.

Power to control and regulate, see ante, § 233.

Statutory provisions, see ante, § 234.

(a) National banks, as federal agencies, are exempted from state legislation only so far as it may interfere with or impair their efficiency in performing the functions by which they are designed to serve the national government.—*Thomas v. Farmers' Bank*, 46 Md. 43.

## § 236. Organization and corporate existence.

## § 237. Reorganization of state banks as national banks.

### Cross-Reference.

See post, § 238.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## § 238. Name.

(a) Act 1865, c. 144 (see Code, art. 11, § 27), authorizing any state banking institution to become a banking association under the laws of the United States, provided "that said bank may continue to use its corporate name for the purpose of prosecuting

and defending suits," etc., simply confers a privilege, and does not conflict with the act of Congress of 1864 requiring national banks to have a corporate name, etc.—*Thomas v. Farmers' Bank of Maryland*, 46 Md. 43. (See Rev. St. U. S. 5134, 5154 [U. S. Comp. St. 1901, pp. 3454, 1466; 1913, §§ 9659, 9694.] )

### § 239. Location and place of business.

### § 240. By-laws.

#### *Cross-Reference.*

Election or appointment of officers, see post, § 251.

### § 241. Capital and shares.

#### *Cross-References.*

Evidence of increase or reduction in action to enforce stockholders' liability, see post, § 250.

Purchase by bank of its own stock, or loaning money on security thereof, see post, § 260.

Execution on stock, see "Execution," § 29. Taxation, see "Taxation," §§ 11, 12.

### § 242. Subscription to and issue of stock.

#### *Cross-Reference.*

Recovery of payment made under mistake of fact, see "Payment," § 85.

### § 243. Transfer of stock.

#### *Cross-Reference.*

Effect on liability for debts and acts of bank, see post, § 249.

#### *Annotation.*

Restrictions on transfer of stock of national bank.—27 L. R. A. 273, note.

### § 244. Dividends.

#### *Cross-Reference.*

Recovery from stockholder in case of insolvency, see post, §§ 248, 250.

### § 245. Lien of bank on stock or dividends.

#### *Cross-Reference.*

Contracts to secure loans, see post, § 260.

### § 246. Rights and liabilities of stockholders in general.

#### *Cross-References.*

Exclusive and concurrent jurisdiction of state and federal courts of suits by stockholders for inspection of books, see "Courts," § 489.

#### *Annotation.*

Personal liability of executor, administrator, or trustee on national bank stock belonging to estate or trust, but standing in his name.—30 L. R. A. (N. S.) 1093, note.

### § 247. Liability of stockholders for debts of bank.

#### *Cross-Reference.*

Action to recover assessment paid under erroneous belief as to liability, see post, § 287.

#### *Annotation.*

Right of receiver, assignee, or trustee, to recover statutory added liability of share-holder under national banking act.—5 L. R. A. (N. S.) 874; 25 L. R. A. (N. S.) 1217, notes.

### § 248.— Nature and extent.

(a) A person appearing on the books of a national bank to be absolute owner of stock is subject to stockholders' liability, though holding it as trustee.—*Kerr v. Urie*, 86 Md. 72, 37 Atl. 789, 38 L. R. A. 119, 63 Am. St. Rep. 493. (See Rev. St. U. S. §§ 5151, 5152 [U. S. Comp. St. 1901, p. 3465; 1913, § 9690 —R. S. § 5151, superseded, see Comp. Stat. 1913, p. 4417, note.]) [*Cited and annotated* in 30 L. R. A. (N. S.) 1093, on personal liability of executor, administrator, or trustee on corporate stock standing in his name.]

(b) Where one residing in Maryland subscribes for stock of a national bank of another state, and then transfers it to his wife, also a resident of Maryland, she becomes owner thereof, and is subject to stockholders' liability, under Rev. St. U. S. § 5152 (U. S. Comp. St. 1901, p. 3465; 1913, § 9690), without regard to the laws of the other state relative to contracts by married women.—*Kerr v. Urie*, 86 Md. 72, 37 Atl. 789, 38 L. R. A. 119, 63 Am. St. Rep. 493.

(c) Persons who hold stock in pledge, the certificates of which stand on the books of the bank in the name of the pledgee, are, in the contemplation of the national banking act, stockholders, and, so long as they thus hold the stock in pledge, are responsible to the creditors of the bank in proportion to the amount so held.—*Magruder v. Colston*, 44 Md. 349, 22 Am. Rep. 47. [*Cited and annotated* in 36 L. R. A. 139, 140, on liability of pledgee of stock as shareholder.]

### § 249.— Effect of transfer of stock.

#### *Cross-References.*

As collateral security, see ante, § 248. Liability of pledgees, see ante, § 248.

### § 250.— Actions and proceedings to enforce.

#### *Cross-References.*

Defense of ultra vires by bank sued as a stockholder, see post, § 261.  
 Concurrent and conflicting jurisdiction of state and federal courts, see "Courts," § 493.  
 Jurisdiction of federal courts as dependent on questions arising under laws of United States, see "Courts," § 284.  
 Jurisdiction of federal courts of suit by nonresident, see "Courts," § 262.  
 Privileged communications, see "Witnesses," § 196.  
 Repeal of act conferring original jurisdiction on United States courts of creditors' bill against stockholders, see "Courts," § 256.  
 Following state statute of limitations in federal courts, see "Courts," § 375.  
 Limitations in general, see "Limitation of Actions," §§ 2, 21, 34, 58, 66, 122.

### § 251. Election or appointment of officers.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 252. Rights and liabilities of officers.

#### *Cross-References.*

Representation of bank by officers, see post, § 262.  
 Action for deceit, see "Fraud," § 13.  
 On official bonds, see "Principal and Surety," §§ 71, 83, 112.  
 Remedy of bank against assignee in insolvency of officer becoming insolvent after taking mortgage in his own name to secure debt due bank, see "Insolvency," § 59.

### § 253.— Nature and extent.

(a) Directors of a national bank cannot be made to respond to damages or to pay excessive loans which had been permitted by the directors to an amount larger than one-tenth of the capital in violation of Rev. St. U. S. § 5200 (U. S. Comp. St. 1901, p. 3494; 1913, § 9761), unless some injury was done to the bank or loss sustained by reason thereof.—*Emerson v. Gaither*, 103 Md. 564, 64 Atl. 26, 8 L. R. A. (N. S.) 738; *Harden v. Same*, Id.; *Horner v. Same*, Id. [Cited and annotated in 39 L. R. A. (N. S.) 174, on liability of bank directors for bad loans or investments.]

### § 254.— Actions to enforce liability.

#### *Cross-References.*

Abatement by death of party, see "Abatement and Revival," § 58.  
 Jurisdiction of federal courts as depend-

ent on case arising under United States laws, see "Courts," § 294.  
 Limitations, see "Limitation of Actions," §§ 30, 39, 58, 102, 170.  
 Removal of causes, see "Removal of Causes," §§ 20, 79.

### §§ 255-257. Criminal responsibility of officers or of persons aiding or abetting them.

#### *Cross-References.*

Principals and accessories, see "Criminal Law," § 78.  
 Embezzlement in general, see "Embezzlement," § 44.  
 Privilege of accused as to production of documents, see "Witnesses," § 298.  
 Review of questions of fact, see "Criminal Law," § 1159.  
 Duplicity, see "Indictment and Information," § 125.  
 Joinder of counts, see "Indictment and Information," §§ 128, 130.  
 Separate counts, see "Indictment and Information," § 99.  
 Hearsay evidence, see "Criminal Law," § 452.  
 Other offenses, see "Criminal Law," §§ 371, 372.

#### *Annotation.*

Misappropriation of special deposit by officer.—32 L. R. A. 776, note.

### § 258. Banking powers.

#### *Cross-Reference.*

Contracts and dealings in general, see post, § 260.

### § 259. Property and conveyance.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 260. Contracts and dealings in general.

#### *Cross-References.*

Right of receiver to recover on notes given without consideration, see "Bills and Notes," § 90.

Defense of ultra vires, see post, § 261.

(a) National banks have no power to purchase negotiable paper except from surplus capital.—*Lazear v. National Union Bank*, 52 Md. 78, 36 Am. Rep. 355. [Cited and annotated in 16 L. R. A. 224, on bank's purchase of notes and bills as distinguished from discounting.]

(b) A national bank organized under the act of Congress approved June 3, 1864, known as the "National Currency Act," has no authority to engage in the business of selling the bonds of railroad companies on commission. Such business is not within

the scope of its corporate powers, and is, therefore, prohibited. (See Rev. St. U. S. §§ 5133 *et seq.* [U. S. Comp. St. 1901, pp. 3454 *et seq.*; 1913, §§ 9657 *et seq.*])—*Weckler v. First Nat. Bank*, 42 Md. 581, 20 Am. Rep. 95. [*Cited and annotated in 16 L. R. A. 223, on bank's purchase of notes and bills as distinguished from discounting.*]

(c) A national bank may acquire stock, to be afterwards converted into money, provided such acquisition is not for the purpose of speculation, but merely to avert or diminish an apprehended loss on account of a claim to which the bank has been subjected.—*First Nat. Bank v. National Exch. Bank*, 39 Md. 600. [*Cited and annotated in 18 L. R. A. 254, on power of corporation to deal in stock.*]

### § 261. Effect of acts ultra vires.

#### *Cross-Reference.*

Estoppel to deny corporate powers, see "Corporations," § 388.

(a) In an action of deceit against a national bank to recover damages for the alleged false representations of its teller in the sale to the plaintiff of certain railroad bonds, *held*, that the selling of railroad bonds on commission was not within the authorized business of a national bank; and, being thus beyond the scope of its corporate powers, the defense of ultra vires was open to it.—*Weckler v. First Nat. Bank*, 42 Md. 581, 20 Am. Rep. 95.

### § 262. Representation of bank by officers.

#### *Cross-Reference.*

Remedy of bank against assignee in insolvency of officer becoming insolvent after taking mortgage in his own name to secure debt due bank, see "Insolvency," § 59.

(a) A national bank is not responsible for any false representations made by its teller to induce a person to purchase railroad bonds, the selling of such bonds not being within the authorized business of the bank.—*Weckler v. First Nat. Bank*, 42 Md. 581, 20 Am. Rep. 95.

### § 263. Deposits in general.

#### *Cross-References.*

Offset against assessment on stock, see *ante*, § 250.

Garnishment, see "Garnishment," §§ 19, 56.

Taxation, see "Taxation," §§ 130, 282, 386, 522.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 264. Payment of checks.

(a) A trustee drew a check on the trust fund, and gave it to defendant in payment of a debt which had no connection with that fund, but which was a debt against another estate, of which also the drawer was a trustee. Defendant, in good faith, and without notice of the misappropriation, presented the check to the bank, and obtained the money. The bank, having been compelled to make good the misappropriation, brought this action to recover the amount of the check from defendant. *Held*, that, as between them, the payment of the check by the bank was a finality, and conclusively binding on the bank.—*Manufacturers' Nat. Bank v. Swift*, 70 Md. 515, 17 Atl. 336, 14 Am. St. Rep. 381.

### § 265. Certificates of deposit.

(a) S. S. deposited money in a bank, and received a certificate of deposit payable "to the order of himself, or E. S. (his wife), on the return of this certificate." *Held*, that the bank was liable for paying to E. S. after notice of the death of S. S., and that notice to the paying teller was notice to the bank.—*Second Nat. Bank v. Wrightson*, 63 Md. 81.

### § 266. Special deposits.

(a) In an action against a national bank, by the senior member of a firm, to recover the value of his bonds that had been deposited with the bank as collateral security for "call loans" to the firm, but, at a time when the firm was not indebted to the bank, had been stolen by burglars, *held*, that the contract entered into by the bank was not a mere gratuitous bailment.—*Third Nat. Bank v. Boyd*, 44 Md. 47, 22 Am. Rep. 35. [*Cited and annotated in 17 L. R. A. 193, on duty of pledgee as to care of thing pledged; in 32 L. R. A. 769, on care required of bank in keeping special deposit.*]



**§ 267. Deposits of public money.***Cross-Reference.*

Claims against insolvent bank, see post, § 288.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 268. Collections.***Cross-References.*

Banks in general, see ante, §§ 156-175.

Failure to remit proceeds of note collected by insolvent bank as affecting payment, see "Bills and Notes," § 429.

(a) An indorsement of a draft to a bank "for collection," accompanied by a credit of the amount of the draft upon the indorser's account with the bank, does not transfer to the bank the legal title to such draft, and a correspondent of the bank, who collects the draft for it, is responsible therefor to the indorser.—Tyson v. Western Nat. Bank, 77 Md. 412, 26 Atl. 520, 23 L. R. A. 161. [Cited and annotated in 7 L. R. A. (N. S.) 696, on bank's title to deposited check on other bank.]

**§ 269. Loans and discounts.***Cross-References.*

Loanng money on the security of its own stock, see ante, § 260.

Statutory provisions, see ante, § 234.

Notes unlawfully discounted by bank as 'claims provable against estate of indorser in bankruptcy, see "Bankruptcy," § 314.

(a) A violation of Rev. St. U. S. § 5200 (U. S. Comp. St. 1901, p. 3494; 1913, § 9761), prohibiting a national bank from loaning more than 10 per cent. of its capital to any one person or corporation, can be taken advantage of only by the government.—Maryland Trust Co. v. National Mechanics' Bank, 102 Md. 608, 63 Atl. 70; Solter v. Same, Id.

(b) A national bank has power to enter into a contract whereby bonds are deposited with it as collateral security for all loans.—Third Nat. Bank v. Boyd, 44 Md. 47, 22 Am. Rep. 35.

**§ 270. Interest or rate of discount, and usury.***Cross-References.*

Constitutional power of Congress in relation thereto, see ante, § 238.

Interest on claims against insolvent bank, see post, § 288.

Statutory provisions, see ante, § 284.

Rights and remedies of assignees, see "Assignments," § 26.

Limitations in general, see "Limitation of Actions," §§ 41, 59.

*Annotation.*

Forfeiture or other effect of taking or reserving illegal interest by national bank.—56 L. R. A. 673, note.

(a) Under Rev. St. U. S. §§ 5197, 5198 (U. S. Comp. St. 1901, p. 3493; 1913, p. 4458), where usurious interest has been paid, remedy by action within two years held exclusive, and hence more than two years after payment the borrower was not entitled to have such payment applied on the principal.—Chipman v. Farmers' & Merchants' Nat. Bank, 121 Md. 343, 88 Atl. 151.

(b) No one can recover usurious interest paid to a national bank but the party who paid it, and it cannot be set off or recouped by another party to the paper.—Lazear v. National Union Bank, 52 Md. 78, 36 Am. Rep. 355. [Cited and annotated in 56 L. R. A. 679, 693, 705, on effect of national bank's taking or reserving illegal interest.]

(c) The thirtieth section of chapter 106 of the national banking act of 1864 (Rev. St. U. S. § 5198 [U. S. Comp. St. 1901, p. 3493; 1913, § 9759]), allowing recovery of double the amount of interest unlawfully taken, is remedial as well as penal, and is to be liberally construed to effect its object. State courts have jurisdiction in cases instituted for such recovery. The judiciary act of 1789, giving the United States district courts exclusive jurisdiction, only contemplates those penalties and forfeitures of a public nature which may be sued for by the government.—Ordway v. Central Nat. Bank, 47 Md. 217, 28 Am. Rep. 455. [Cited and annotated in 48 L. R. A. 40, on administration of federal laws in state courts; in 56 L. R. A. 674, 691, 692, on effect of national bank's taking or reserving illegal interest.]

**§ 271. Dealings in exchange, money, and securities.***Cross-Reference.*

Of state banks, see ante, §§ 188-195.

**§ 272. Circulating notes.***Cross-References.*

Of state banks, see ante, §§ 196-212.

Forgery, see "Forgery," § 20.

Larceny, see "Larceny," § 30.

### § 273. Actions by or against national banking associations.

#### *Cross-References.*

Actions to enforce liability of officers, see ante, § 254.  
 By or against receiver, see post, § 287.  
 Defense of ultra vires, see ante, § 261.  
 Relating to usury, see ante, § 270.  
 Appellate jurisdiction of United States Supreme Court, see "Courts," § 382.  
 Equitable relief against judgment, see "Judgment," §§ 452, 456.  
 Removal of causes, see "Removal of Causes," §§ 19, 20, 30, 72, 82.  
 Review by United States Supreme Court of decisions by state courts relating to national banks, see "Courts," § 394.

### § 274.— Capacity to sue and be sued.

#### *Cross-References.*

See ante, § 254.  
 Fraud, see "Fraud," § 31.  
 Remedy of bank against assignee in insolvency of officer becoming insolvent after taking mortgage in his own name to secure debt due bank, see "Insolvency," § 59.

### § 275.— Jurisdiction and venue.

#### *Cross-References.*

Action for penalty for usury or to recover usury paid, see ante, § 270.  
 Statutory provisions, see ante, § 234.  
 Exclusive and concurrent jurisdiction, see "Courts," § 489.  
 Jurisdiction of federal courts, see "Courts," §§ 256, 294, 327, 382.  
 Removal of causes, see "Removal of Causes," §§ 19, 20, 30, 72, 82.  
 Review by United States Supreme Court of decisions of state courts relating to national banks, see "Courts," § 394.

#### *Annotation.*

Jurisdiction of state courts over actions by or against national banks.—48 L. R. A. 35; 62 L. R. A. 536, notes.

### § 276.— Parties.

#### *Cross-References.*

Attachment, see post, § 278.  
 To action against officer's assignee in insolvency, see "Insolvency," § 95.

### § 277.— Process and appearance.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 278.— Attachment and garnishment.

#### *Cross-References.*

Statutory provisions, see ante, § 234.  
 Exclusive and concurrent jurisdiction of state and federal courts, see "Courts," § 489.  
 Garnishment of deposits, see "Garnishment," § 56.  
 Liability of bank to garnishment, see "Garnishment," § 19.

#### *Annotation.*

Right to issue attachment against national bank.—6 L. R. A. 226, note.

(a) Under the Act of Congress approved March 3, 1873, § 2, amending Act June 3, 1864, § 57 (Rev. St. U. S. § 5242 (U. S. Comp. St. 1901, p. 3517; 1913, § 9834)), providing that no attachment shall be issued against a banking association or its property before final judgment, an attachment on warrant issued by a state court, to affect the property of a national bank, is illegal and void.—Chesapeake Bank v. First Nat. Bank, 40 Md. 269, 17 Am. Rep. 601.

### § 279.— Injunction.

### § 280.— Pleading.

(a) The cashier of a national bank is the proper person to make the affidavit of the true amount of the indebtedness for which the bank brings suit.—Parkhurst v. Citizens' Nat. Bank, 61 Md. 254.

### § 280½.— Execution and enforcement of judgment.

### § 281. Voluntary liquidation.

### § 282. Reorganization.

#### *Cross-Reference.*

Of state banks as national banks, see ante, § 237.

### § 283. Consolidation.

#### *Cross-Reference.*

Of state banks, see ante, § 67.

### § 284. Forfeiture of franchise and dissolution.

### § 285. Insolvency and its effect in general.

#### *Cross-References.*

Receiving deposits after insolvency, see ante, § 256.  
 Failure to remit proceeds of note collected by insolvent bank as affecting payment, see "Bills and Notes," § 429.

### § 286. Transfers and preferences affected by insolvency.

#### *Annotation.*

Exceptions to the prohibition of preferences by insolvent national banks.—25 L. R. A. 546, note.

### § 287. Assets and receivers on insolvency.

#### *Cross-References.*

Liability to receiver on note given on stock subscription, see ante, § 242.  
 Raising question of ultra vires as to executed contract, see ante, § 261.

Admission by receiver, see "Evidence," § 244.

Interference by state court with property to which jurisdiction of federal court has attached, or vice versa, see "Courts," § 504.

Representation of bank as affecting limitations provided in fidelity insurance policy, see "Insurance," § 622.

Right of receiver to recover on notes given without consideration, see "Bills and Notes," § 90.

Statute empowering comptroller to appoint as vesting judicial power, see "Constitutional Law," § 55.

Action for deposit, see ante, § 263.

Enforcement of liability of officers, see ante, §§ 253, 254.

Enforcement of stockholders' liability, see ante, § 250.

Ancillary jurisdiction of federal court to restrain action by receiver, see "Courts," § 264.

Appellate jurisdiction of United States Supreme Court of action against receiver, see "Courts," § 382.

Concurrent and conflicting jurisdiction of state and federal courts, see "Courts," § 493.

Exemption of receiver from requirement of security on appeal, see "Appeal and Error," § 374.

Federal court's jurisdiction of action by receiver as dependent on amount in dispute, see "Courts," §§ 268, 327.

Removal of actions by or against receivers, see "Removal of Causes," §§ 19, 20.

Security for costs in actions by receivers, see "Costs," §§ 109, 110.

## § 288. Presentation and payment of claims.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

## V. SAVINGS BANKS.

### Cross-References.

Competition of national bank with saving institution, see ante, § 258.

Taxation of savings banks and deposits therein, see "Taxation," §§ 130, 228, 282, 386, 522.

## § 289. Nature and status.

### Cross-Reference.

Question for jury, see post, § 306.

## § 290. Control and regulation in general.

## § 291. Constitutional and statutory provisions.

### Cross-References.

Implied repeal by revision, see "Statutes," § 167.

Preferences to non-stockholding depositors as class legislation, see "Constitutional Law," § 208.

## § 292. Incorporation and organization.

### Cross-References.

Evidence of existence, see ante, § 28.

Name, see ante, § 31.

## § 293. Corporators and stockholders.

## § 294. Officers and agents.

### Cross-References.

Official bonds, see "Bonds," § 61; "Principal and Surety," §§ 71, 142.

Presumption as to officers' knowledge of the law as to purchase by bank of its own stock, see "Evidence," § 65.

## § 295. Powers in general.

### Cross-Reference.

Presumption as to officers' knowledge of the law as to purchase by bank of its own stock, see "Evidence," § 65.

(a) A savings bank provided by its by-laws for three classes of depositors,—weekly depositors, who were stockholders on the deposit of a minimum sum, special depositors, and irregular depositors. Plaintiff made a special deposit, receiving a certificate acknowledging receipt of the money on special deposit, at a specific rate of interest, if not drawn out within one year. *Held*, that the special deposit was, in effect, a loan, creating an indebtedness on the part of the bank; and the weekly depositors having, as stockholders, received benefits from the loans, in the way of increased dividends, they are estopped from pleading that such loans were void, as being beyond the power of the corporation.—*Heironimus v. Sweeney*, 83 Md. 146, 34 Atl. 823; *Edwards v. Same*, *Id.*

(b) The want of power of a savings bank to discount a note cannot be pleaded by way of defense to a suit on a note so discounted.—*United German Bank v. Katz*, 57 Md. 128.

## § 296. Rules of bank.

### Cross-Reference.

Part of contract with depositor, see post, §§ 300, 301.

## § 297. Representation of bank by officers and agents.

## § 298. Deposits.

### Cross-References.

Actions for deposits, see post, § 306.

Powers in general, see ante, § 295.

Interpleader in relation thereto, see post, § 306; "Interpleader," § 4.

Preferences to non-stockholding depositors as class legislation, see "Constitutional Law," § 208.

Taxation, see "Taxation," §§ 130, 228, 282, 386, 522.

**§ 299.—In general.**

(a) A savings bank provided by its by-laws for three classes of depositors,—weekly depositors, who were stockholders on the deposit of a minimum sum, special depositors, and irregular depositors. Plaintiff made a special deposit, receiving a certificate acknowledging receipt of the money on special deposits, at a special rate of interest, if not drawn out within one year. *Held*, that the special deposit was, in effect, a loan creating an indebtedness on the part of the bank, and as such was a lien on the assets prior to the lien of weekly depositors, who were by the by-laws made stockholders.—*Heironimus v. Sweeney*, 83 Md. 146, 34 Atl. 823; *Edward v. Same*, *Id.*

**§ 300.—By-laws or pass books as part of contract.**

*Cross-Reference.*

Measure of damages for conversion of bank book, see "Trove and Conversion," § 50.

**§ 301.—Title to and disposition of deposits.**

*Annotation.*

Liability for payments to fraudulent claimants.—69 L. R. A. 317, note.

Effect, on liability for payments to fraudulent claimants, of contributory negligence of the depositor.—69 L. R. A. 340, note.

**§ 302. Investments, loans, and discounts.**

(a) A savings bank organized under Acts 1868, c. 471 (see Code, art. 23, §§ 3 *et seq.*), has no power to discount a promissory note, but such lack of power is no bar to recovery by the bank against the indorser of the note.—*United German Bank v. Kate*, 57 Md. 128. (See Code, art. 11, §§ 31 *et seq.*)

(b) A charter conferring on a savings institution the power to invest deposits made with it in public stocks or "other securities," authorizes the lending upon bills, bonds, notes, and mortgages, as well as stocks, and also the power of making loans by way of discount.—*Duncan v. Maryland Sav. Inst.*, 10 G. & J. 299.

(c) There is nothing in the charter of the

Maryland Savings Institution which requires two securities to be taken for money lent, nor is it an objection to a note discounted there that it is not negotiable.—*Duncan v. Maryland Sav. Inst.*, 10 G. & J. 299.

**§ 303. Interest and dividends on deposits.**

**§ 304. Losses.**

**§ 305. Repayment of deposits.**

**§ 306. Actions.**

*Cross-References.*

Conformity of findings of court to pleadings, see "Trial," § 396.

Declarations of law on trial by court, see "Trial," § 386.

**§ 307. Reorganization.**

*Cross-References.*

Insolvency and receivers, see post, § 309.

State banks, see ante, § 65.

**§ 308. Forfeiture of charter and dissolution.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**§ 309. Insolvency and receivers.**

*Cross-References.*

Set-off of deposits, see ante, § 299.

Statutory provisions, see ante, § 291.

(a) Certain depositors in the Maryland Savings Institution, incorporated in December, 1826, agreed with the institution that their deposits, which they were at liberty to withdraw at pleasure, should be converted into permanent stock. They afterwards received increased dividends thereon, and participated in the entire profits of the institution, and large amounts of special deposits were made on the security of this stock. *Held*, that under these circumstances they were bound by an equitable estoppel from claiming an equality with the special depositors, on the insolvency of the institution, in the payment of their claims based on their original deposits, or from making any attempt to shield the fund created by the conversion of their deposits into stock, from a liability to debts of the institution, contracted on the faith of its responsibility therefor.—*Maryland Sav. Inst. v. Schroeder*, 8 G. & J. 93, 29 Am. Dec. 528.

## VI. LOAN, TRUST, AND INVESTMENT COMPANIES.

### *Cross-References.*

Capacity of corporations in general to hold property in trust, see "Corporations," § 434.

Building and loan associations, see "Building and Loan Associations." Foreign companies in general, see "Corporations," §§ 641, 642, 657, 659, 661, 665, 668, 672.

License tax on trust companies dealing in real estate, see "Brokers," § 3.

Privileged communications, see "Witnesses," § 188.

Taxation, see "Taxation," §§ 126-131.

### § 310. Control and regulation in general.

### § 311. Statutory provisions.

#### *Cross-Reference.*

Subject and title of act relating to safe-deposit and trust companies, see "Statutes," § 113.

(a) No impairment of the obligation of contracts occurs as to the contractual rights of creditors of a trust company under Acts 1892, p. 153, c. 109, providing that each stockholder shall be liable to the creditors of such a corporation for double the par value of his stock therein, in the case of one who has individually sued a stockholder, but has not obtained judgment, where the existing statute was changed by Acts 1904, p. 597, c. 337, taking away the pre-existing remedy of any creditor to bring a separate action at law against any stockholder to enforce his liability, and substituting therefor the remedy by bill in equity on behalf of all the creditors against all the stockholders in the state, that act to become operative as of January 1, 1903, and to cause abatement of all pending actions instituted after that date.—*Miners' & Merchants' Bank v. Snyder*, 100 Md. 57, 59 Atl. 707, 68 L. R. A. 312, 108 Am. St. Rep. 390. (See Code, art. 23, §§ 116, 117.)

### § 312. Incorporation and organization.

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

### § 313. Stockholders.

(a) A banking company's failure to pay the franchise tax required by act 1900, p. 411, c. 272 (Code, art. 23, § 120), did not

relieve stockholders from the liability to depositors and creditors imposed by act 1892, p. 156, c. 109, § 85l (Code 1904, art. 23, § 94), for debts contracted and deposits made after December 1, 1900.—*Murphy v. Wheatley*, 102 Md. 501, 63 Atl. 62.

(b) Under act 1892, p. 153, c. 109, providing that each stockholder of a bank or trust company shall be liable to depositors and creditors for double the amount of stock at the par value held by such stockholder in such corporation, such stockholders were liable for twice the par value of the stock held, in addition to the amount paid by them on their stock subscription.—*Murphy v. Wheatley*, 102 Md. 501, 63 Atl. 62. (See Code, art. 23, § 116.)

(c) Under act 1892, p. 153, c. 109, providing that each stockholder of a bank or trust company shall be liable to depositors and creditors for double the amount of stock at the par value held by each stockholder in such corporation, stockholders are not liable for debts due depositors and creditors who became such prior to the time such stockholders acquired their stock.—*Murphy v. Wheatley*, 102 Md. 501, 63 Atl. 62. (See Code, art. 23, § 116.)

(d) Code 1904, art. 23, § 94 (act 1892, p. 153, c. 109), provided that every safe deposit, guaranty, loan, and fidelity company incorporated under the laws of the state, or of any other state, or of any foreign country, doing business in the state, should be subject to the provisions of the act. Section 104 of same Code (act 1892, p. 156, c. 109) provided that each stockholder should be liable to depositors and creditors of any "such" corporation for double the amount of the stock at the par value held by such stockholders. *Held*, that these provisions were applicable to a domestic corporation incorporated under a special charter to do a safe deposit, trust, and fidelity business.—*Murphy v. Wheatley*, 100 Md. 358, 59 Atl. 704. (See Code 1911, art. 23, §§ 106, 116.)

### § 314. Officers and agents.

#### *Cross-References.*

Engaging in competing business, see "Corporations," § 315.

Liability on official bonds, see "Principal and Surety," § 79.

**§ 315. Functions and dealings.***Cross-References.*

Appointment of trust company as administrator, see "Executors and Administrators," §§ 18, 21.

Appointment of trust company as guardian, see "Guardian and Ward," § 10.

Compensation of trust company as administrator, see "Executors and Administrators," § 488.

Liability of loans, investments, and securities to taxation, see "Taxation," § 131.

Right of trust company to become surety on attachment bonds, see "Attachment," § 133.

(a) Code 1904, art. 23, §§ 82-87 (see Code 1911, art. 23, §§ 24 *et seq.*), provide that when it is desired to reduce the capital of a corporation, public notice shall be published for four weeks that a meeting will be held to determine whether the capital shall be diminished, that the owners of two-thirds of the stock must vote in favor of reduction, and that a certificate showing the reduction shall be filed. Act 1892, p. 156, c. 109, § 85, relating to safe deposit, trust and guaranty companies, provides that each stockholder shall be liable to depositors and creditors for double the par value of his stock. The Maryland Trust Company was granted a charter subject to the provisions of this act, and Const. art. 3, § 39, which declares that the General Assembly shall grant no charter for banking purposes except on condition that the stockholders shall be liable to the amount of their shares for the debts. *Held*, that the Maryland Trust Company had no right to purchase its own stock.—*Maryland Trust Co. v. National Mechanics' Bank*, 102 Md. 608, 63 Atl. 70; *Solter v. Same*, Id. (See Code 1911, art. 23, § 116.) [Cited and annotated in 25 L. R. A. (N. S.) 52, 55, on right of corporation to purchase its own shares.]

**§ 316. Forfeiture of franchise and dissolution.****§ 317. Insolvency and receivers.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**VII. CLEARING HOUSE.***Cross-Reference.*

Custom affecting rights and liabilities of members, see "Customs and Usages," § 7.

**§ 318. Nature and status.***Annotation.*

Clearing house business.—25 L. R. A. 824; 2 L. R. A. 700, notes.

**§ 319. Constitution, by-laws, and rules.**

(a) The rules of a clearing house association are binding only on its members, and do not affect the rights and liabilities of others, and the failure of a bank paying a check drawn by a depositor in favor of a third person, who forwards it through another bank for collection, to offer to return the check to the collecting bank and to demand repayment, within the time prescribed by the rules of the association, does not impair its right to recover the amount from the third person, providing its right to recover is otherwise perfect.—*National Exch. Bank of Baltimore v. Ginn & Co.*, 114 Md. 181, 78 Atl. 1026.

**§ 320. Settlements and transactions through clearing house.****§ 321. Rights and liabilities of banks not members.****§ 322. Security for payment of balances.****§ 323. Actions.**

No paragraphs in this digest. For cases in other jurisdictions, see same title and section number in Decennial and Key Number Digests, and references therein to Century Digest.

**BANNS.***Cross-Reference.*

Publication of banns, see "Marriage," § 24.

**BANQUETTES.***Cross-References.*

See "Municipal Corporations," §§ 265-588, 678.

**BAPTISM.***Cross-References.*

Certificate as evidence see "Criminal Law," § 436.

Record as evidence, see "Evidence," § 351.

**BAR.***Cross-References.*

Admission to practice law, see "Attorney and Client," §§ 1-11.

Associations, see "Attorney and Client," § 31.

Decree in admiralty as bar to second suit, see "Admiralty," § 95.

Of action by award of arbitrators, see "Arbitration and Award," § 81.

Of action by former adjudication, see "Judgment," §§ 540-633.  
 Of action by limitation, see "Limitation of Actions," §§ 165-175.  
 Of allowance to surviving wife, husband, or children from estate of decedent, see "Executors and Administrators," §§ 184-190.  
 Of bastardy proceedings, see "Bastards," §§ 23-32.  
 Of claim against estate of decedent, see "Executors and Administrators," § 213.  
 Of curtesy, see "Curtesy," § 11.  
 Of entail, see "Estates Tail," §§ 6, 7.  
 Of remainder, see "Remainders," § 10.  
 Of reversion, see "Reversions," § 4.  
 Of suit by laches, see "Equity," §§ 67-88.  
 Pleas in bar, see "Equity," §§ 154-194;  
 "Pleading," §§ 76-100, 112-137.

*Annotation.*

Words and Phrases, 704.

### BARBERS.

*Cross-References.*

Authority of board of health to prevent spread of contagious skin diseases in barber shops, see "Health," § 23.  
 Constitutionality of health regulations, see "Health," § 21.  
 Delegation of power to board of examiners to prescribe the qualifications of barbers, see "Constitutional Law," § 62.  
 Deprivation of liberty as to occupation without due process of law, see "Constitutional Law," § 275.  
 Keeping shop open on Sunday as work of necessity, see "Sunday," § 7.  
 Licenses and license taxes as denial of equal protection of laws, see "Constitutional Law," § 230.  
 License taxes, in general, see "Licenses," §§ 8, 22, 29, 38, 40, 42.

Making it a misdemeanor to work on Sunday as deprivation of liberty or property without due process of law, see "Constitutional Law," § 275.  
 Regulation as denial of equal protection of laws, see "Constitutional Law," § 238.  
 Regulation as within police power, see "Health," § 21.  
 Regulation of barbers, as class legislation, see "Constitutional Law," § 208.  
 Restraining opening of shops on Sunday, see "Injunction," § 102.  
 Right to question constitutionality of act providing for establishment of board of examiners and regulation of the occupation of a barber, see "Constitutional Law," § 42.  
 Sunday laws applied to barber shops as undue restraint of personal liberty, see "Constitutional Law," § 83.  
 Validity of ordinance keeping open barber shops on Sunday, see "Sunday," § 2.  
 What constitutes violation of ordinance prohibiting keeping open barber shops on Sunday, see "Sunday," § 5.  
 Construction of statutes requiring registration, see "Statutes," § 211.  
 Deprivation of property without due process of law, see "Constitutional Law," § 296.  
 Grant of special privileges, see "Constitutional Law," § 205.  
 Powers of courts to determine validity of statute, see "Constitutional Law," § 70.  
 Regulation as interference with right to hold property, see "Constitutional Law," § 87.  
 Special laws regulating barber schools, see "Statutes," § 81.  
 Subject and title of statutes, see "Statutes," § 114.  
 Tools as baggage, see "Carriers," § 391.  
 Validity of regulations, see "Health," § 21.

*E. E. D.*  
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END OF VOLUME I.

















